

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

LINDA A. COOK, INDIVIDUALLY AND)	
AS EXECUTOR FOR THE ESTATE OF)	Civil Action
ROLAND COOK,)	No. 21-11362-ADB
)	
Plaintiff,)	
V.)	
)	
FOSTER WHEELER ENERGY)	
CORPORATION, et al.,)	
)	
Defendants.)	

BEFORE THE HONORABLE ALLISON D. BURROUGHS
UNITED STATES DISTRICT JUDGE

JURY TRIAL DAY NINE

September 21, 2023
9:14 a.m.

John J. Moakley United States Courthouse
Courtroom No. 17
One Courthouse Way
Boston, Massachusetts 02210

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E X H I B I T S

<u>Exhibit No.</u>	<u>Received</u>
None	

P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Courtroom 17, Boston, Massachusetts, on September 21, 2023.)

(Case called to order.)

THE COURT: I only have 15 minutes. I want to run through a bunch of these.

So before you guys got here, I just talked to the plaintiffs briefly to ask. I now have two sets of instructions from Foster Wheeler. I have various verdict forms. I have the plaintiff's jury instructions, and they don't all really sync up, like the things that are in the verdict form are not the same things that are in the instructions. So I just want to run through.

I did ask the plaintiffs this morning if they're intending on proceeding on their design defect claim, and they told me they think they're going to give it up, but they want to let me know at lunch.

I'm going to ask the same question for Foster Wheeler. You have a lot of affirmative defenses that it doesn't seem like you're proceeding on.

MS. MERCER-LAWSON: What we are proceeding on would be

1 the government contractor failure to warn and the superseding
2 cause.

3 THE COURT: All right. I am having trouble figuring
4 out what to do about damages. I'm not going to have this jury
5 apportion between the 37 other defendants. There's no evidence
6 on it. There's been no evidence about what their exposure was
7 or what their products were, anything like that. I don't know
8 how I can ask this jury to do that. So if they come up with
9 like loss of consortium -- if they get there, if we come up
10 with a loss of consortium figure and, let's just say it's \$2
11 million or \$5 million, let's say ten for the sake of math, can
12 I do it, that they come up with \$10 million? And then you back
13 out what's already been -- what's already come from the other
14 defendants? Like, how do I do this?

15 MR. BRALY: First of all, that would be a subsequent
16 motion for entry of judgment after the fact, but, yeah, on a
17 joint and several liability apportionment scheme, that is how
18 it would work. It would be pro tanto setoff with the
19 settlements that existed.

20 THE COURT: When you did these settlements with these
21 37 other parties, are you breaking it down between like loss of
22 consortium and --

23 MR. BRALY: No, no. It's a settlement for all claims.
24 It is not broken out specifically.

25 THE COURT: If there's negligence or a warranty claim,

1 whatever the jury awards is all against them. That's a
2 discrete award, right?

3 MR. BRALY: That's right. Total damages for the --

4 THE COURT: That's for their conduct.

5 MR. BRALY: -- that's at trial, who would then be
6 entitled to post-verdict offsets.

7 And then if we go with the joint and several liability
8 scheme, like I believe we should, then you get into the whole
9 Supreme Court case *McDermott* and that kind of rubric of what
10 ends up being a pro tanto setoff and what ends up being a
11 setoff that is uncollectible and borne by them, and you get
12 into all sorts of things that will be the subject of post-
13 verdict briefing in all likelihood.

14 THE COURT: That's my favorite, post-trial briefing.

15 MR. BRALY: Yeah.

16 MS. MERCER-LAWSON: So our position is that under
17 maritime law, we're not in a joint and several liability
18 scheme. And that evidence can come in -- part of the reason
19 why we are fine with the reading of Mr. Cook's testimony is he
20 is testifying to these other defendants and who he believed he
21 was exposed to. He's testified -- he's mentioned Westinghouse,
22 Crane, Elliot, DeLaval, and it's our position and, based on our
23 prior maritime cases we've had, that those would go on the
24 verdict form that jurors can at least give them a percentage.
25 We're not saying like we're going to come after them, but that

1 they could put it down as they think these people -- you know,
2 maybe the turbine was such percent of the exposure, and then it
3 all would add up.

4 THE COURT: You haven't given them nearly enough to
5 make those sorts of determinations. Like, they don't really
6 know what the products are --

7 MS. MERCER-LAWSON: In our view, at least Mr. Cook
8 listing what he had seen and what he saw other people do is
9 evidence, and their own causation expert, well, a couple of
10 them, you know, Holstein, their causation expert, and then
11 Dr. Brody, their scientific expert, has explained it takes
12 very, very little. So we just don't see how it can be a little
13 dab will do you doesn't work for the defendants that aren't at
14 trial but a little dab will do you does work for the defendant
15 that is present at trial.

16 MR. BRALY: So a couple of things about this. You're
17 absolutely right about what we haven't heard. Under *DeVries*,
18 there's a whole rubric of facts that have to be considered in
19 determining whether or not a manufacturer of what they
20 characterize as a bare metal product, like a pump or valve, can
21 be legally liable for the injury.

22 The evidence in this case is that every gasket on that
23 boat had been changed out by the time Mr. Cook boarded that
24 vessel. They can't apportion fault to Crane Co or to pump
25 manufacturers because they haven't established anything about

1 what Crane Co knew about the use of asbestos in their products,
2 like we have with Foster Wheeler, they haven't established and
3 they can't, with the experts or with the testimony that they've
4 designated in their pretrial submissions, in their 26(a)(3)
5 report, they don't have that evidence to present about what
6 Aurora or DeLaval or Westinghouse knew about the use of
7 asbestos in their products, including the use of replacement
8 asbestos in their products. All of which has been presented
9 for Foster Wheeler. So --

10 THE COURT: Mr. Fitzpatrick can barely contain
11 himself. Go ahead.

12 MS. MERCER-LAWSON: No, I know.

13 THE COURT: Go ahead.

14 MS. MERCER-LAWSON: Respectfully, *DeVries* is something
15 that the plaintiff has to prove by a preponderance of credible
16 evidence. He's right, there isn't a case -- Crane Co isn't
17 sitting here, so they're not -- plaintiff isn't going to prove
18 all of the three prongs of the *DeVries* test that is now
19 maritime law. They do have to prove it as to Foster Wheeler,
20 but we at least are entitled, for causation and liability
21 purposes, to have those names on there. And what they do with
22 proving up their specific case about us and whether or not we
23 are liable to warn for the incorporation of a third-party
24 containing asbestos product, that's a very different story.

25 MR. BRALY: It's not. Everything we have to prove

1 about them, they have to prove about everybody else. It's
2 their affirmative defense. They have to prove, like they were
3 a plaintiff, everything that we have to prove against them.

4 THE COURT: Are you going to mansplain this to me,
5 because she's doing fine. I mean, go ahead, but don't --

6 MR. FITZPATRICK: No.

7 MS. MERCER-LAWSON: I was just going to say that,
8 respectfully again, *DeVries* is not an affirmative defense.
9 It's a test for the plaintiff.

10 Mr. Fitzpatrick would also like me to say and
11 everybody didn't warn according to the plaintiff, so it does
12 not matter what any defendant would do.

13 MR. BRALY: It absolutely matters. Wait a second.
14 We're talking about liability. Right?

15 THE COURT: No. Well --

16 MR. BRALY: For them to be able to attach liability
17 for any -- I mean, presuming that we're not going to go with
18 the joint and several liability verdict form, which I believe
19 we should, I believe all they should be asked is whether or not
20 Foster Wheeler was negligent and whether Foster Wheeler is
21 strictly liable. Our verdict form is correct.

22 However, if we are going to ask them to apportion to
23 settled entities, they can't go on the form until they've
24 established that there is a liability case that would survive a
25 directed verdict against those parties. And they don't have

1 that evidence. They haven't disclosed it. They don't have the
2 witnesses for it. And they certainly didn't prove it up with
3 our experts.

4 And *DeVries* is -- we have to meet *DeVries*. We have to
5 be able to establish, for replacement parts, what the
6 manufacturer knew, and we haven't heard a lick of information
7 about what GE knew or Westinghouse knew or DeLaval or Briggs &
8 Stratton or any of the other umpteen dozen defendants that
9 they've asked to apportion to.

10 THE COURT: All right. Does *DeVries*, does that just
11 go to the negligence failure to warn claim, or does it also go
12 to the warranty claims?

13 MS. MERCER-LAWSON: *DeVries* is a maritime issue. It
14 goes to the failure to warn. We wouldn't try to mislead and
15 say that it extends to Massachusetts law.

16 THE COURT: So how do we -- I can't -- I'm having
17 trouble conceptualizing the verdict form, which is giving me
18 trouble with the jury instructions.

19 MS. MERCER-LAWSON: Specifically, I think -- what part
20 is giving you pause, I guess? I mean, is it just that we can't
21 reconcile the two of what we have? Is that what it is?

22 THE COURT: Well, it's that, but it's also, do I need
23 a separate damages valuation for the warranty claims and for
24 the negligence claim?

25 MR. BRALY: I don't believe -- I'm sorry.

1 MS. MERCER-LAWSON: That could be.

2 I think the problem is we really haven't heard much
3 evidence on warranty. And the way to prove up warranty is to
4 either prove that there is a design defect or a failure to
5 warn. So if you don't get there under *DeVries*, how would you
6 even get to the other?

7 MR. BRALY: Your Honor, that's -- okay. So we've
8 already proven our warranty claim. A warranty claim requires
9 that there was causation and no warning. All of this
10 tangential stuff that we've heard about the Navy and who knew
11 what and when and everything else, completely irrelevant for
12 the warranty claim. The warranty claim is one of the easiest
13 claims that we can possibly prove, and we've already done it.
14 Did it cause it? And was there a warning? That's it. That's
15 the extent of the warranty claim.

16 THE COURT: Why don't we just go with the warranty
17 claim then?

18 MR. BRALY: Because punitive damages arguably don't
19 apply to a non-conduct-based injury, arguably. And I would
20 like to submit on two areas of causation. Although, I could
21 just submit on the warranty claim, but that would require --
22 well, that would eliminate Admiral -- or Captain Forman for
23 next week, because his testimony would no longer be relevant.
24 I don't know. I haven't thought about it a lot. It's been --

25 THE COURT: So I'm going to try to get you a draft of

1 these jury instructions by close of business today, very rough.
2 I'm the only one that's looked at them. No law clerks have
3 looked at them. It's just been me. But just to give us a
4 point of places to talk, but you'll see when you read them,
5 even if you look at your drafts, they're incredibly repetitive
6 because there's not that much difference between the negligence
7 and the warranty claim.

8 MR. BRALY: I did want to respond to your question
9 about damages. I don't think separate damages instructions are
10 necessary. I don't think that would be proper. There's one
11 set of damages that would apply to a yes on either question,
12 and that damages total -- it doesn't change. It's loss of
13 consortium damages and pain and suffering damages. And that
14 carries through identically for both claims. So there's no
15 reason to bifurcate and ask the jury to -- it would lead to
16 really the risk of inconsistent verdict.

17 THE COURT: I could ask for a total number, and then I
18 could ask for an apportionment, and then if the apportionment
19 turns out to be not an appropriate way to go, then we'd still
20 have the total number.

21 MR. BRALY: What if we were to do like X amount pain
22 and suffering, X amount loss of consortium, and just do the
23 summation of those for the total?

24 MS. MERCER-LAWSON: Our position, we would have a
25 little bit of issue with that because we still would like to

1 preserve our point that we believe under maritime law -- if
2 we're still -- we believe under maritime law punitive damages
3 and loss of consortium are not recoverable. So it would be
4 difficult for us to suss out how to do that on appeal.

5 MR. BRALY: Wouldn't that make perfect sense, then?
6 If that's going to be their appellate issue, wouldn't that make
7 perfect sense?

8 THE COURT: Wouldn't what make perfect sense?

9 MR. BRALY: To list out loss of consortium, pain and
10 suffering and punitive damages as three separate items that
11 make up a whole number so if there is an appellate issue on
12 this, that those could be eliminated, if necessary, without the
13 need for a retrial.

14 MS. MERCER-LAWSON: Yeah, I'm sorry. I wasn't
15 disagreeing with Mr. Braly on the severing. Sorry about that.

16 MR. BRALY: Sure, apologies.

17 THE COURT: Are you talking about going just with the
18 warranty claims and listing those three things? Is that what
19 you're suggesting?

20 MR. BRALY: I hadn't conceptualize the idea of just
21 submitting on just the warranty claim. So I'm not in a
22 position right now to tell you yes or no. That's a really
23 major decision that I need to look at in more detail. My
24 intention was to submit on the negligence action, which is just
25 negligence, and then the warranty strict liability based claim,

1 the failure to warn claim. That was my intention, to submit on
2 both.

3 THE COURT: Negligence just on the failure to warn
4 theory or negligence on --

5 MR. BRALY: I mean, negligence, yeah. It would be
6 couched in failure to warn, but negligence is kind of a
7 broad --

8 THE COURT: Well, right now the way the jury
9 instructions are drafted, which is a function of what one or
10 both of you have submitted, you're going on two negligence
11 theories, right, negligent failure to warn and negligent
12 design.

13 MR. BRALY: I thought the design was incorporated into
14 the warranty.

15 THE COURT: I think it's in both in what you
16 submitted.

17 MS. MERCER-LAWSON: I apologize. It was difficult for
18 us because we still aren't quite sure what claims are in play.
19 Yeah, that's why we were a bit rambling in our verdict form.

20 THE COURT: So at the moment they're separated out.

21 MR. BRALY: Negligent design and negligent -- yeah.

22 THE COURT: I'm not sure how else to do it because if
23 you say were they negligent, negligent in what?

24 MR. BRALY: Right.

25 THE COURT: What are we saying was the negligence? It

1 has to be either --

2 MR. BRALY: It is the failure to warn.

3 So with the design issue, if it's all right, I would
4 like until after the lunch break to give you the --

5 THE COURT: On just the -- are you taking it out of
6 the negligence claim now, or you want to wait and tell me both
7 of them?

8 MR. BRALY: I would like to tell you both of them
9 after lunch.

10 THE COURT: Okay.

11 MR. BRALY: I know that sounds indecisive, but it
12 is --

13 THE COURT: No, I'm trying to get you guys -- the
14 charge is -- you know, it's got a lot of issues in it that --
15 I've never tried an asbestos case, and the damages thing is
16 really sort of perplexing me. I really don't know how to do
17 it. It's sort of the fact that some of these claims are
18 subject to maritime law and some of them are subject to
19 Massachusetts law, it's hard to explain to a jury. Although,
20 I'm not sure. Do I need to explain it to them anywhere besides
21 the damages?

22 MR. BRALY: I'm not entirely sure why a loss of
23 consortium or pain and suffering would have a law attached to
24 it in the jury instructions or verdict form. Like, an
25 identification of, you know --

1 THE COURT: Right. The loss of consortium, right. So
2 the way it's drafted now, there's a description of two types of
3 negligence, two types of warranty claims. And then it says if
4 you get to damages, there's basically three kinds of damages
5 that you can award. So it doesn't say punitives only go to the
6 warranty or only go to the --

7 MR. BRALY: Right.

8 THE COURT: -- only go to the negligence. It's not
9 broken out like that.

10 MR. BRALY: I don't think it needs to be. Because
11 punitive is conduct-based right? The instruction on punitive
12 damages is related to the conduct of the party.

13 THE COURT: So as long as we're on the subject of
14 that, why do I need all the stuff about gross negligence and
15 recklessness? Is there any reason you need both? Because
16 isn't gross negligence less than recklessness?

17 MR. BRALY: Yes.

18 THE COURT: So is the damages different?

19 MR. BRALY: I'll take a look at it.

20 THE COURT: Why can't I just instruct on gross
21 negligence? Because if I hit gross negligence, I mean, isn't
22 that -- that gets you to punitives. So why do we have to push
23 them to recklessness?

24 MR. BRALY: I don't have an answer for you as I stand
25 here. I will check it and I will get back to you.

1 THE COURT: Okay. I'm going to bring in the jury. I
2 have more of these. I have a whole list.

3 MR. BRALY: Before the jury comes in, we're going to
4 start the day by reading a stipulation on damages, if that's
5 okay.

6 THE COURT: The medicals?

7 MR. BRALY: Yes.

8 THE COURT: Okay. Also, the way I'm doing this in the
9 charge, and tell me if you want it differently, I'm telling
10 them that the stipulations are all going to be on one exhibit.
11 Are you going to put together an exhibit that has all the
12 stipulations, or are you just going to rely on the oral
13 testimony? Either is fine. I'm just trying to -- I want the
14 instructions to conform to what you're doing.

15 MR. BRALY: For the damages, we'll mark it as an
16 exhibit just because that's the only evidence they will hear,
17 and so if they award damages for that, it needs to reflect the
18 evidence.

19 THE COURT: I have that in the instructions, and I'll
20 have them written. I said there's a stipulation to the
21 medicals.

22 MR. BRALY: Okay. And I have one question, just
23 because of your preference for the way we've been questioning
24 witnesses, I just wanted to make sure before we go into the
25 weekend that your closing preferences are our closing, their

1 closing, and then we get a rebuttal.

2 THE COURT: That's fine.

3 MR. BRALY: Okay.

4 THE COURT: What I would like to do -- I want to use
5 our time, and I'm really -- it's just such a long day for them
6 to hear all the closings and the charge, that I would love to,
7 whenever everybody rests, at least give them the first half of
8 the charge, which I think is going to be pretty
9 non-controversial. Like up to the elements of the offense.
10 And those I can definitely get you tonight, today. It's the
11 elements that are sort of boggling me down here.

12 MR. BRALY: Yes, Your Honor.

13 THE COURT: So I'd like to use that time. I'd like to
14 do -- we'll see how it plays out, but I'd like to split it, to
15 the extent we could. If the whole charge is ready to go, like,
16 Tuesday afternoon, when everybody rests, I would love to do it
17 and then have you close Wednesday and then start deliberating.
18 But I feel like we have a lot of things to sort out here.
19 Like, sometimes I know I'm going to hand you the charge and
20 it's going to be, we're going to nitpick it, but it's going to
21 be fine. This I think has some bigger ticket items that need
22 to be resolved.

23 MR. BRALY: All right.

24 THE COURT: I actually have the instructions in a.
25 State case, state asbestos case, that somebody sent me, and it

1 doesn't seem like they wrestled with these issues at all.

2 MR. BRALY: The application of maritime law and, you
3 know, *McDermott* and the cases that are out there about it does
4 make it more difficult.

5 The stipulation references DCo. When I read it to
6 them, I'll just take them out. But they'll still be printed.
7 I don't think it's a major thing.

8 THE COURT: Can't you print a new one?

9 MR. BRALY: Yeah, we can. I'm just now noticing it.

10 THE COURT: Well, send it to Karen. We'll delete it.
11 If the issue is a printer or whatever, send it to us, we'll
12 delete it and mark it as an exhibit.

13 MR. BRALY: Okay.

14 THE COURT: Can you read it in a way that leaves out
15 DCo?

16 MR. BRALY: I can read it in a way that leaves out
17 DCo.

18 THE COURT: Then we'll get a written one that conforms
19 to that. Some problems are so easily solved.

20 Karen, you want to go --

21 MR. BRALY: Your Honor, just by way of witness
22 ordering, we're going to start the day reading a shorter
23 deposition of Mack Hamilton, and then we'll finish up Roland
24 Cook's testimony. And if we have time left, we will do Linda
25 Cook's testimony. Linda Cook will be our last witness.

1 MR. FITZPATRICK: Judge, doesn't it make sense to
2 finish Cook, instead of breaking him with another co-worker? I
3 don't get it. They were in a certain area. Why don't we just
4 finish it?

5 MR. BRALY: I didn't know that I had to take
6 instruction from opposing counsel about how I ordered my
7 evidence.

8 MR. FITZPATRICK: You know, Your Honor, I'll tell you,
9 you can't make a comment without someone attacking. I'll sit
10 down.

11 THE COURT: They can do it in any order they want, as
12 can you when it's your turn.

13 COURTROOM CLERK: All rise for the jury.

14 (Jury enters the courtroom.)

15 THE COURT: I'm impressed you're all here. This was
16 not a good commute day. Just a heads-up on the schedule, just
17 to keep you apprised of where we are. We have today. Tomorrow
18 we'll sit from 9:00 to 1:00. We're off on Monday. Tuesday,
19 I'm not sure what our exact hours will be. It depends where we
20 are. But we all anticipate that you will get the case sometime
21 on Wednesday.

22 So I hope -- my ideal is always that we have closings
23 and charge in the morning and you have time in the afternoon to
24 deliberate. We'll see. That sort of depends -- I mean, if
25 they need into Wednesday to rest their case, we may not get it

1 all done on Wednesday, but it is my intention that you would --
2 I shouldn't say "intention" -- my hope that you'll start to
3 deliberate on Wednesday. So you may want to sort of think
4 about what kind of schedules you want to keep during
5 deliberations just for your collective planning purposes.

6 All right. So we finished Dr. Holstein yesterday. So
7 what's next?

8 MR. BRALY: Your Honor, at this time plaintiffs have a
9 stipulation of the parties to read into evidence, and then we
10 will call a witness by deposition.

11 THE COURT: Okay. I think I alluded to this briefly
12 the other day, but just to give you a little bit more of a
13 fulsome explanation, a stipulation is something that both the
14 parties agree to. So it's a fact that does not need to be
15 proven. You can accept that fact as proven, but then it will
16 be up to you to give it whatever weight you deem appropriate.
17 Okay.

18 MR. BRALY: The parties, Linda Cook, individually and
19 as the executor for the Estate of Roland Cook, and the
20 defendant, Foster Wheeler Energy Corporation, present this
21 stipulation as to the plaintiff's medical damages.

22 The parties agree and stipulate that the medical
23 expenses in this case are \$708,491.

24 And at this time plaintiffs call Mack Hamilton by
25 deposition. And we're going to switch the roles. I'll ask the

1 question; Mr. Chapman will answer.

2 THE COURT: And you're reading designations from both?

3 MR. BRALY: Yes.

4 THE COURT: So this is like the deposition of
5 Mr. Cook. Each side gets to designate what parts of the
6 deposition they want read, but whatever designations -- their
7 designations and their designations are going to be presented
8 to you in this way with these two attorneys.

9 When you're ready.

10 TESTIMONY OF MACK STEWART HAMILTON:

11 Q. And can you please state your full name for the record.

12 A. Mack Stewart Hamilton, Sr.

13 Q. And where do you live, Mr. Hamilton?

14 A. 206 Katy Drive, Lexington, Virginia.

15 Q. And Mr. Hamilton, are you represented by an attorney
16 today?

17 A. No, I am not.

18 Q. And when did you first learn about this deposition?

19 A. Perhaps three months ago from Duffy, I think is his name,
20 out of Maine. I received a letter in the mail telling me
21 something about this case. So I called him back and it was
22 Roland Cook was -- he was Roland Cook's attorney. Cook was
23 stationed aboard the ship with me, the *U.S.S. Mullinnix*, for a
24 period of time.

25 Q. Have you seen any documents or paperwork related to

1 Mr. Cook's case?

2 A. No, I have not.

3 Q. Have you read Mr. Cook's deposition transcripts?

4 A. No, I have not.

5 Q. Has anyone told you about the content or read any of
6 Mr. Cook's deposition transcripts to you?

7 A. No, they have not.

8 Q. So the last time you had any conversations with Mr. Cook
9 was when you were both still in the service, correct?

10 A. Yeah.

11 Q. And -- okay. And did you do anything to prepare for
12 today's deposition?

13 A. No.

14 Q. And when did you join the service?

15 A. 1964.

16 Q. And you joined the United States Navy, correct?

17 A. Yes.

18 Q. And you voluntarily joined?

19 A. Yes, I did.

20 Q. And where did you go to basic training?

21 A. Illinois.

22 Q. Great Lakes?

23 A. Great Lakes.

24 Q. And on completion of basic training, did you have any
25 other schooling or training before you were assigned to the

1 ship port?

2 A. Yes, I did. Boiler tender school in Illinois.

3 Q. And how long was boiler tender school?

4 A. I forget the exact length of it, but it's somewhere, three
5 months perhaps, somewhere in that range.

6 Q. And when you finished boiler tender school, were you then
7 assigned to a ship?

8 A. Yes, I was.

9 Q. And what ship were you assigned to?

10 A. *U.S.S. Mullinnix* DD 944.

11 Q. Sir, how long did you serve on the *U.S.S. Mullinnix*?

12 A. From that period I went aboard to May of '69.

13 Q. And were you discharged from the service in May of '69, or
14 did you go aboard another ship?

15 A. I was discharged.

16 Q. Honorable discharge?

17 A. Honorable, yeah.

18 Q. And upon discharge, did you come back to Virginia?

19 A. Yes, I did.

20 Q. Where was the *Mullinnix* when you boarded it?

21 A. Norfolk, Virginia. D&S Piers.

22 Q. And what was your rate when you boarded the *Mullinnix*?

23 A. A fireman -- not a fireman but a fireman in training.

24 Q. A fireman apprentice?

25 A. Yeah.

1 Q. You told us the *Mullinnix* was a destroyer, correct?

2 A. Yes.

3 Q. Do you recall the size of the ship?

4 A. Not the particulars, no. I forget the exact length and
5 width and that.

6 Q. Do you recall the number of crew on the ship?

7 A. Well, that varied. In wartime 310 men, I believe.
8 Normally we ran way less than that in the engineering
9 department, which I was a part of.

10 Q. And after your three months as an engineer yeoman, what
11 was your next assignment?

12 A. The forward boiler room.

13 Q. And for the remainder of time that you were on the
14 *Mullinnix*, were you assigned to any other engineering spaces
15 other than the forward boiler room?

16 A. No. No, I wasn't assigned anywhere else, but I did work
17 in the after boiler room.

18 Q. Okay. So you were assigned to the forward fireroom the
19 entire time, but there were some points in time when you worked
20 in the after fireroom; is that correct?

21 A. Yes.

22 Q. Okay. And did you work in any other areas or engineering
23 spaces on the ship during the time that you were assigned to
24 the forward fireroom?

25 A. No, just those two areas.

1 Q. Okay. And when you were first assigned to the forward
2 fireroom, did you have any particular training to do the work
3 you needed to do in the fireroom?

4 A. Yes, I went to boiler tender school.

5 Q. And is that at the school from Great Lakes, or did you
6 attend further schooling on the ship?

7 A. That was the school in Great Lakes.

8 Q. When you started in the forward fireroom, what, generally
9 speaking, were your job duties?

10 A. I was a fireman apprentice. I was assigned a cleaning
11 station, which comprised a certain area on the starboard side
12 of the ship, upper level, and that was your cleaning space, in
13 which you did exactly what I just said. You cleaned it. You
14 painted it. You know, you scrubbed the deck plates. That was,
15 you know, your second home. So that's what you did.

16 Q. By the time you left the *Mullinnix*, what was your rate?

17 A. B2 second class.

18 Q. And do you recall when you -- excuse me.

19 And do you recall when you became third class?

20 A. Well, approximately a year. The rate at that time, each
21 rate, they could be advanced or scaled back. So whatever the
22 timeframe was at that particular time, nine months to a year
23 for a fireman, the best I can remember. And the same probably
24 for third class.

25 Q. And you referenced, when we were starting to talk at the

1 beginning, the Bu. Ships manual. Are those manuals that you're
2 referring to that you reviewed?

3 A. Not particularly.

4 Q. Did the Navy give you materials to review in order to
5 prepare for the test?

6 A. The manuals I'm talking about, like you buy a car, you get
7 an operating manual with the car. These pieces of equipment,
8 it had the manual that goes with that specific piece of
9 equipment. And that is what you look at.

10 Q. I see. So you were looking at manuals for the equipment
11 that was in the boiler room?

12 A. Yes.

13 Q. So you did two tours of duty in Vietnam?

14 A. Yes, I did.

15 Q. Did your job duties change when you became a BT3?

16 A. Three?

17 Q. Yes. When you went from a fireman to a BT3, did your job
18 duties change?

19 A. Yes, they did.

20 Q. And what were your job duties as a BT3?

21 A. Each rate has a certain qualification that they can do up
22 to that point. Third class allows me to run the fireroom.
23 Stand watch. "Watch" means that you've got four men watching
24 the boiler operate. Watching the gauges, doing everything to
25 keep check on the amount of steam in the boiler. And prior to

1 that a fireman could stand watch. He had to have somebody
2 above him, so I did it. I was qualified to do it. I knew how
3 to do it, so they let me do it. That was the old Navy.

4 The new Navy now, oh, man as a third class, you're legally
5 able to do that and tell the men under you, firemen and firemen
6 apprentice, what to do, how to do it, and where to do it.

7 Q. So if I understand what you said, when you were a fireman
8 you also stood watches in the boiler room, even though that
9 job --

10 A. Yeah, for a short period of time.

11 Q. Then when you became a BT3, that was more of your main job
12 duties, correct?

13 A. Yes. That was one of them. The other one was to help to
14 repair equipment that broke down, that type of thing.

15 Q. Got it.

16 A. And that applies to firemen. If anything in the fireroom
17 broke, to help with the equipment.

18 Q. So there was some period of time that you and Mr. Cook
19 stood watch in the forward fireroom at the same time?

20 A. I'm sure there was, yes.

21 Q. Okay. And you said that you're sure there was, and that's
22 because you rotated, you all rotated through so you'd be on the
23 watches with your fellow sailors at different times?

24 A. Yes.

25 Q. Okay. Do you know what year it was that you and Mr. Cook

1 were on watch in the forward fireroom at the same time?

2 A. No. The watches rotated every battalion. I don't
3 understand your question particularly.

4 Q. Do you recall whether or not Mr. Cook was in the same
5 berthing compartment as you?

6 A. Yes, he was.

7 Q. And how do you recall him from that berthing compartment?

8 A. That's where we were assigned when we went aboard the
9 ship. That's where you stayed.

10 Q. So were all the boiler tenders assigned to the same
11 berthing compartment?

12 A. Yes, they were.

13 Q. Okay. So you knew Mr. Cook was there with you because all
14 the boiler tenders were in that space, correct?

15 A. Yes.

16 Q. Okay. Where was your bunk?

17 A. Right down on top of the floor.

18 Q. Do you know where Mr. Cook's bunk was?

19 A. Pardon me?

20 Q. Do you know where Mr. Cook's bunk was?

21 A. Going through my mind, I can see faces and I -- but I
22 can't put names on them. I think his was behind me on the
23 opposite bunk.

24 Q. And before we leave your berthing quarters, one of the
25 things you mentioned a couple of times now is that the asbestos

1 that you recalled on the ship, there were insulated pipes in
2 your berthing quarters, correct?

3 A. Yes, there were.

4 Q. And those were insulated in asbestos, correct?

5 A. Yes.

6 Q. And did dust or pieces from that insulation fall off the
7 pipes and into the area where the sailors slept?

8 A. Well, I can remember one specific time that they did. Gun
9 Mount 53 was right above us, and they were firing off the coast
10 of Vietnam. And also there was a high pressure air line that
11 was used in the gun mount somewhere. It ruptured and blew all
12 the insulation. And when you looked at the bunks, I was on the
13 bottom and another one and another one and a little space about
14 this high and the air lines and everything were hit. So you
15 only had about this much space and --

16 Q. I'm going to stop you. The record we're going to have --
17 we're going to have a transcript that's a written record and
18 you said "about this much." About 18 inches?

19 A. Yeah. That, that was all the space you had between
20 bunches.

21 Q. And that included between the top bunk and the pipes above
22 it?

23 A. And the pipes and the air vents, and even air vents,
24 everything was insulated. Air vents. Everything.

25 Q. Yeah.

1 MR. BRALY: Oh, that's you.

2 Q. And what did you do to clean it up?

3 A. Swept it up.

4 Q. And when you did that sweeping, did you breathe the dust
5 from the sweeping?

6 A. Pardon me?

7 Q. When you did the sweeping, did that sweeping create dust?

8 A. I'm sure it did.

9 Q. And did you breathe that dust?

10 A. Yeah. If you was in there, you breathed it.

11 Q. And did the Navy tell you that you should wear any kind of
12 breathing protection when you cleaned that dust in the berthing
13 compartment?

14 A. No.

15 Q. At any time you served on the *Mullinnix*, did the United
16 States Navy give you any breathing protection when you were
17 working around pipe insulation?

18 A. No.

19 Q. And what equipment did you learn about when you were in BT
20 school?

21 A. Well, BT school applies to boiler tenders, which is
22 boilers. Mainly boilers is what they taught you, not salt
23 water pumps. Mainly pertaining to the boilers and associated
24 equipment, but for the most part they would just have us tear
25 down a boiler, repair it and retube it and rebrick it, put it

1 back together, and some equipment. But what equipment, I don't
2 remember. But associated equipment with the boiler to make it
3 run would be air, forced air blower and oil is all you need to
4 make it run.

5 Q. So you have to make sure that the fire has both fuel and
6 air, correct?

7 A. Yes.

8 Q. And that's how to keep the fire going?

9 A. Uh-huh.

10 Q. And that's how the boiler keeps making steam when water
11 passes through it?

12 A. It's full of water. It will make steam.

13 Q. Okay. And the steam is what's necessary to propel the
14 ship?

15 A. Yes.

16 Q. And we're not talking about a boiler like the boiler in my
17 house back in New England. We're talking about very large
18 boilers, correct?

19 A. The principle is the same. You heat water to make steam.
20 Steam will radiate and come back.

21 Q. But the size of the boiler in the Navy --

22 I'm sorry. Let me try that again.

23 But the size of the boiler on the Navy ship, how big were
24 the boilers on the *Mullinnix*?

25 A. Oh, they were big. But they make them bigger. But

1 nevertheless, they had four modified D super heater boilers.

2 They operated at 1,200 pounds to 1,400 pounds of steam.

3 Q. You mentioned one of the things you learned how to do was
4 rebrick these boilers. You could stand up inside those
5 boilers, correct?

6 A. I could what?

7 Q. Stand up inside the boiler.

8 A. Inside the firebox, yes.

9 Q. Yes. And you said there were four boilers on the
10 *Mullinnix*. Were there two firerooms on the *Mullinnix*?

11 A. Yeah, there was. Forward and aft.

12 Q. And so two boilers in each fireroom?

13 A. Yes.

14 Q. And again, so the record is clear, they were side by side?

15 A. End to end.

16 Q. So forward to back of the ship?

17 A. Yeah.

18 Q. So in the forward fireroom, going from the front of the
19 ship to the back of the ship, there would be a boiler, and then
20 a small space, and then another boiler right behind it,
21 correct?

22 A. Yes.

23 Q. And then behind that is where -- is that where the forward
24 engine room was?

25 A. The forward engine room and then the after fireroom.

1 Q. And then the after engine room?

2 A. Yes.

3 Q. All in a line?

4 A. All in a line.

5 Q. Mr. Hamilton, you brought with you today your DD-214,
6 which is your discharge paper from the Navy, correct?

7 A. Yes.

8 Q. And we've marked that as Exhibit No. 1, and I'm going to
9 give you back your original that you brought today. But
10 according to your DD-214, you entered the United States Navy on
11 August 10 of 1964, correct?

12 A. Yes.

13 Q. And you received as part of your service the National
14 Defense Medal, correct?

15 A. Yes.

16 Q. And you also received a Vietnam Service Medal, correct?

17 A. Yes. And one they didn't put on there.

18 Q. I was going to ask.

19 A. I got that one when I got out of the Navy.

20 Q. And what was that?

21 A. The Navy Achievement Award.

22 Q. And when did you receive that?

23 A. Well, I got out in '69, so it had to be '69.

24 Q. Upon leaving the service is when you received that?

25 A. Yes.

1 Q. And education and training is listed here as the Navy
2 training course for firemen, basic military requirements, and
3 the military requirements for petty officer three and two and
4 BT/A school, and that's November 9, 1964 to 29, January, 1965.
5 Does that sound right?

6 A. I think it does.

7 Q. Now, when you started working on pieces of equipment in
8 the boiler room on *Mullinnix*, is it fair to say that you cannot
9 tell me where Mr. Cook was when you worked on any particular
10 piece of equipment?

11 A. No, I can't tell you that.

12 Q. Okay. And can you tell me today whether you have a memory
13 of observing Mr. Cook work on any particular piece of equipment
14 in the boiler room on the *U.S.S. Mullinnix*?

15 A. I don't have any memories of that, but it was done, I'm
16 sure. Everybody worked on equipment.

17 Q. Okay. All right. And I understand that the *Mullinnix*,
18 when Mr. Cook was on it, did one tour of duty in Vietnam and it
19 also underwent several repair and overhaul periods when he was
20 on board?

21 A. Yes.

22 Q. What was your -- strike that. When the ship was
23 undergoing a repair period or an overhaul period, do you recall
24 what your job duties were?

25 A. What my job --

1 Q. Yes.

2 A. To assist, we called them yardbirds. No disregard
3 intended but that's what -- the yard workers came aboard to do
4 whatever they were assigned to do, and one of my jobs was to
5 help them any way we could. We cleaned up after them, whatever
6 they were doing.

7 Q. And it was the United States Navy that decided what
8 equipment went on its ships, correct?

9 A. Yes.

10 Q. And it was the United States Navy that taught its sailors
11 how to repair and maintain the equipment that was on its ships,
12 correct?

13 A. Yes.

14 Q. And the Navy expected you to do that repair and
15 maintenance work in a manner that instructed you to do that,
16 correct?

17 A. Absolutely.

18 Q. And on a schedule that the Navy gave to you, correct?

19 A. Yes.

20 Q. When the ship was -- strike that. Back in Vietnam,
21 Mr. Cook told us that the ship would be on the firing line for
22 about three weeks, and then it would go to Subic Bay to get
23 restocked and any repairs that needed to be made and then come
24 back to the firing line. Is that an accurate description?

25 A. Yes.

1 Q. And when the ship was in Subic Bay, any repair work that
2 needed to be done by the ship was done by the sailors, or was
3 that done by yard workers or both?

4 A. A little bit of both.

5 You wrapped the line and I forget the mixture of what it's
6 called, but imagine --

7 MR. FITZPATRICK: Your Honor, objection. May I speak
8 with counsel?

9 THE COURT: Sure.

10 (Discussion held off the record.)

11 MR. BRALY: Aaron, I'm going to back up to line 17.
12 Okay?

13 MR. CHAPMAN: Okay.

14 MR. BRALY: And then you pick up where the designation
15 is.

16 MR. CHAPMAN: Sure.

17 Q. And when you had to do repair work to the pipe insulation,
18 what work did you have to do?

19 A. You wrap the line, and I forget the mixture of what it's
20 called, but imagine, like, you wrap it and, like, and you take
21 a tube, it's a paste that comes in a container, and you cover
22 this with it and lay another sheet of asbestos. Now you cut
23 this with a pair of scissors or a knife, and you've got frayed
24 edges. All the way around there's asbestos. And you build up
25 a layer of asbestos insulation up to match the other one.

1 Q. And you're breathing those fibers as they're being
2 released as you're putting it together?

3 A. Yes.

4 Q. And the paste that you talked about, is that a paste that
5 you had to mix something to make?

6 A. The best I remember it came in a premixed container.

7 Q. And they didn't give you any type of breathing protection
8 to wear while you did that work, correct?

9 A. No.

10 Q. I'm correct?

11 A. You're correct.

12 Q. I'm correct, okay.

13 And you had to do that throughout the time you were on the
14 *Mullinnix*, correct?

15 A. From time to time, yes.

16 Q. You mentioned fire blankets. When the Navy -- when the
17 ship was in the Navy yard to either repair or overhaul work,
18 what part of your job duties -- were part of your job duties to
19 stand fire watch?

20 A. Not particularly mine at the time. But I did stand some
21 fire watches.

22 Q. And fire watches, again, was to make sure that fires
23 didn't break out on the ship while work was being done,
24 correct?

25 A. Yes.

1 Q. And were fire blankets used -- strike that. When you were
2 on fire watch, were you watching other either yardbirds or
3 sailors doing welding, correct?

4 A. Some part of the fire protection, yes.

5 Q. And do you recall those fire blankets being used while
6 those procedures were going on?

7 A. Yes.

8 Q. And when those fire blankets were moved from place to
9 place, did they release dust?

10 A. I'm sure they did.

11 Q. And do you recall the brand name, trade name or
12 manufacturer's name of those fire blankets?

13 A. No.

14 Q. And the rigid insulation for the pipe that you described,
15 I've heard some sailors describe it as a half moon or a clam
16 that has an opening and a closing. Is that --

17 A. In some places it's like that.

18 Q. Not everywhere?

19 A. No.

20 Q. Okay. And the rigid one, did you sometimes have to cut
21 that?

22 A. Yes.

23 Q. And what did you do to cut that?

24 A. With a hacksaw, whatever was available.

25 Q. Did you observe other sailors doing the same type of work

1 with repairing and replacing pipe insulation that you did?

2 A. Yes.

3 Q. And did you observe yard workers doing that type of work
4 when the ship was either -- in either for overhauls or
5 maintenance periods?

6 A. Yes.

7 Q. And were you present when the yard workers did that work?

8 A. Yes.

9 Q. And were other sailors, who were stationed in the boiler
10 room, present when yard workers did that insulation work?

11 A. Yes.

12 Q. Certainly. Do you recall observing other sailors who were
13 stationed in the forward fireroom being present when yard
14 workers were repairing and replacing pipe insulation on the
15 *Mullinnix*?

16 A. Yes.

17 Q. Good afternoon, Mr. Hamilton.

18 A. Good afternoon.

19 Q. Obviously, you know my name, it's Ethan Horn, and I'm one
20 of the attorneys representing Mr. Cook in this case.

21 First of all, I want to start by talking about the
22 overhauls that the *Mullinnix* underwent. All right?

23 A. All right.

24 Q. Mr. Cook described three overhauls during the time he was
25 on there. He described that there were two, and then one

1 toward the end of his service was more of a major, major
2 overhaul that took place. And rather than talk about these
3 overhauls individually, I'm going to lump them all together so
4 we just talk about overhauls in general. Okay?

5 A. All right.

6 Q. I know when counsel was asking you a question, you said
7 that the fireroom was a beehive of activity, correct?

8 A. Yes.

9 MR. BRALY: Excuse me. Okay. All better.

10 Q. And that would certainly be the case when the overhauls
11 were taking place, true?

12 A. Yes.

13 Q. Because during an overhaul, you not only have the ship's
14 crew who is there but you have the yardbirds, as you mentioned,
15 coming aboard and performing work?

16 A. Yes.

17 Q. During these overhauls, do you agree that a lot of
18 painting took place?

19 A. Painting?

20 Q. Painting.

21 A. I would say some painting took place, yes.

22 Q. Yes. And there was the chipping of metal being performed?

23 A. Oh, yeah.

24 Q. And also you mentioned cleaning. There was also a lot of
25 cleaning going on, correct?

1 A. Yeah, yeah.

2 Q. All right. Now, during overhauls, is it fair to say that
3 the insides of the boilers, like the firebox, would be worked
4 on by folks?

5 A. Yes.

6 Q. Would that include things like removing the asbestos
7 panels and firebrick and metal from the inside of the firebox?

8 A. Yes.

9 Q. And Mr. Cook also described that in addition to that, all
10 the material that was hauled out of the inside of the firebox
11 of the boilers had to be carted off ship. Is that an accurate
12 statement?

13 A. Yes.

14 Q. Of course, once all that was done, that required then the
15 whole area to be cleaned up again. Is that accurate?

16 A. Yes.

17 Q. Do you remember who made the boilers on board the
18 *Mullinnix*?

19 A. Foster Wheeler.

20 Q. Mr. Cook also described that there were occasions that the
21 steam drum on the boiler was opened during these overhaul
22 periods.

23 A. Yes.

24 Q. Is that consistent with your recollection?

25 A. Oh, yes.

1 Q. He also described that there was a big gasket between the
2 door and the boiler. Was that consistent?

3 A. A what?

4 Q. A seal sort of that went --

5 A. Yeah, a mount that goes in the steam drum that you access.

6 Q. Between that door and -- and the gun itself, was there a
7 seal there so that the metal wasn't on metal, so that there was
8 something in between the two to make a nice tight --

9 A. A gasket, yes.

10 Q. We talked about gaskets. We haven't really defined what
11 that is in this deposition. In terms of the purpose that a
12 gasket serves, can you describe for us what it does?

13 A. It prevents whatever you're trying to seal from escaping
14 between two attached pipes or, in this case, a manhole versus
15 steam drum.

16 Q. When we're talking about the boiler, we've talked about
17 the insides, that sort of firebox being removed. Once that was
18 done during these overhauls, did workers have -- did the
19 workers then have to, or sailors, have to go back in and
20 reinstall all that stuff, the asbestos sheets, the firebrick,
21 all of that?

22 A. Now, you're talking about a tube overhaul. In the
23 shipyard we had those. And the ship personnel were involved in
24 that in the sense that you had to cut the tubes out and you had
25 to take the firebrick out and, you know, take it off ship. You

1 had to dump it in the appropriate places wherever they dumped
2 it at the time, clean it up, wire brush that area down. There
3 was a big wall where it mounts that you're looking at, and then
4 you put it back together.

5 Q. Was that whole process of ripping out the insides of the
6 boilers, including the asbestos panels, et cetera, and then
7 reinstalling that, those processes, were those pretty dusty?

8 A. Oh, yeah, there's no doubt.

9 Q. What does the term "punching tubes" mean?

10 A. It means taking an air hose and then an attachment on the
11 end of it and you mount it to a wire brush, and you go into the
12 steam drum, which is the top part of the boiler. And you have
13 a mud drum, a smaller container at the bottom. The tubes run
14 from the mud drum and the wall of the firebox under the floor
15 and into the mud drum, and you take its attachment on an air
16 line and just clean that pipe.

17 Q. Mr. Cook described during the overhauls that he would be
18 punching tubes. Is that consistent with your recollection of
19 what would occur during an overhaul?

20 A. Oh, yeah, we done that. We called that water side. You
21 had to clean the water side. That's the side of the tube where
22 the water was, of course. And the outside was called the fire
23 side. You had to clean them, too. The outside was done by
24 manual scraping. You know, you've got burnt-on oil inside the
25 firebox. And you really had to -- that was a nasty little job.

1 Q. When you were doing that, did that create dust as well?

2 A. Yes.

3 Q. When -- do you remember whether or not there were any
4 exterior parts of the boiler that were insulated?

5 A. The steam drum and the mud drum were insulated. The steam
6 drum, just imagine an eight-foot -- it was round. The steam
7 drum was round, so the top part of it was covered with
8 asbestos. The only part that was exposed was where the manhole
9 was, and once you got the seal back in it and then properly
10 set, it was covered with asbestos molding. It was already made
11 up. You just slid it back into place and tied it off so it
12 wouldn't fall off.

13 Q. So in order to access those doors that you had mentioned,
14 you'd have to actually remove a piece of insulation to get to
15 the door, and when the work was performed you had to put it
16 back on?

17 A. Yes.

18 Q. So were you replacing natural insulation on the Foster
19 Wheeler boiler?

20 A. Uh-huh.

21 Q. You mentioned that when counsel was asking her questions,
22 when the gun would fire, it would shake and insulation would
23 come loose?

24 A. On occasion, yes.

25 Q. Did you personally remove and replace asbestos packing on

1 these --

2 A. Oh, yeah, all the time.

3 Q. Is that consistent with your understanding of what the
4 duties of a typical boiler tender would be aboard ship?

5 A. Of course.

6 Q. Now BuShips stands for Bureau of Ships?

7 A. Yes.

8 Q. Now, do you know what role, if any, the actual equipment
9 manufacturer played in providing information that went into
10 those manuals?

11 A. I don't know what they told BuShips manual. You know, I
12 just have a BuShips manual to read, but sometimes we had to
13 follow an operator's manual, I'll call it, for a blower.

14 MR. BRALY: That concludes the testimony of Mack
15 Hamilton.

16 THE COURT: You're excused.

17 MR. CHAPMAN: Thank you, Your Honor.

18 MR. BRALY: Your Honor, at this time the plaintiffs
19 will resume the testimony of Roland Cook.

20 THE COURT: They're going back to Roland Cook's
21 deposition. If you want to stand up and just shake it off for
22 a minute before they start, let's take a minute to do that.

23 (Pause.)

24 THE COURT: When you're ready.

25 MR. CHAPMAN: Thank you, Your Honor. All right. Page

1 304.

2 MR. BRALY: Yes, sir.

3 TESTIMONY OF ROLAND COOK:

4 Q. All right. Would you -- in your memory, would it be true
5 that sometimes when you were removing the old head gasket, it
6 would come right off, and other times it would be difficult to
7 take off?

8 A. Exactly.

9 Q. And if it was a situation where it came right off --
10 that's what you do, you take the valve covers off and you look
11 at the head and you'd just see the gasket. You'd pick it up,
12 you'd take it off, you'd throw it away, and you'd put a new one
13 on, right?

14 A. Well, you've got to clean off all the metal faces first,
15 because you've got a --

16 Q. We're going to talk about what you have to do if you get a
17 tricky one that's hard to take off in a second. Okay?

18 A. Okay.

19 Q. If it was a situation where it would all come off in one
20 piece, that's what you'd do, you'd just remove it in one piece?

21 A. Correct.

22 Q. If, on the other hand, it was a situation where it was
23 stuck to the head or only some of it would be taken apart, then
24 that's where you'd have to scrape it, right?

25 A. Yes, sir.

1 Q. Okay. Now, I know I keep saying I'm going to do things
2 and then I jump around, but there's a method to it. We're
3 going to talk about how you scrape off -- scrape a gasket off
4 in a second.

5 What I want you to think about now is that -- excuse me.

6 What I want you to think about now is that you've already
7 done that, so the gasket is completely removed and the surface
8 is completely ready for a new gasket. Are you with me so far?

9 A. Yes, sir.

10 Q. All right. The installation of that new gasket, number
11 one, they're precut, correct?

12 A. Correct.

13 Q. So they're cut and made so that they fit the metal surface
14 that you're putting them on, right?

15 A. Yes, and in only one direction.

16 Q. Right, right. Because they're irregularly shaped and you
17 have to kind of eyeball it to make sure it's the right shape
18 and get it to fit the screw holes and where they're supposed to
19 be and all that, right?

20 A. Correct.

21 Q. Okay. So if the surface is set and it's ready to receive
22 the gasket, all you do at that point is take the gasket out of
23 the packaging, put it on the metal and bolt the two pieces of
24 metal back together again, right?

25 A. Correct.

1 Q. All right. So when you're doing that and when you're
2 putting a new gasket on a surface that's already been cleaned
3 and prepared, there isn't any dust created by installing that
4 new gasket; am I right about that?

5 A. When you've cleaned the surface, you've created some
6 debris and dust.

7 Q. I'm totally with you, and I'm going to -- we're going to
8 talk about that. What I'm talking about now is after you've
9 cleaned it.

10 A. Okay.

11 Q. You've cleaned all the debris away, and that debris you're
12 cleaning away comes from the old gasket, correct?

13 A. Correct.

14 Q. All right. You've already done that. You've got the new
15 gasket in your hand and you're putting it on. Then you're
16 going to bolt them back together again. That part of it
17 doesn't create any dust, right?

18 A. Correct.

19 Q. That's correct?

20 A. Yes.

21 Q. So when we're talking about the creation of dust, we're
22 talking about scraping the old gasket material off the surface,
23 right?

24 A. Correct.

25 Q. All right. Now, the gaskets that we're talking about, be

1 they head, oil pan, exhaust, whatever the gaskets are, the
2 purpose of those gaskets is to provide a seal between the two
3 pieces of metal, right?

4 A. Correct.

5 Q. All right. And the intent of the seal is so they won't
6 leak, so the engine won't leak?

7 A. Correct.

8 Q. All right. So in order to make sure that the seal works
9 the way it's designed, you have to ensure that the surface
10 where the old gasket was is smooth and clean before you put the
11 new gasket in?

12 A. Correct.

13 Q. All right. And you need to be careful that you don't
14 gouge the head itself so that everything will be flat and it
15 will all fit flush together, correct?

16 A. Correct.

17 Q. All right. And you would use -- what kind of tools would
18 you use to scrape off the old gasket material?

19 A. We always try to use a putty knife, and besides the putty
20 knife, I don't know if you're familiar with it, but there's
21 like a silver handle thing with a razor blade in it that you
22 use to clean your windows --

23 Q. Yeah.

24 A. -- or remove a sticker off your windshield or something.
25 We used those a lot very carefully because --

1 Q. Yeah, you see the guys at the gas station where you get
2 your inspection sticker use those --

3 A. Yes.

4 Q. -- to take off the old one, right?

5 A. Yes.

6 Q. So those are the two tools that you would use, either a
7 putty knife or the sticker remover, right?

8 A. Yes.

9 Q. Did you use anything else?

10 A. No.

11 Q. Are those two tools that you can recall using to scrape
12 off gaskets, either the putty knife or this device that we were
13 talking about to remove stickers from car windows?

14 A. Yeah, that -- we would use that on the heads. Now, we
15 would also use some solvent, if you were doing base gasket for
16 the sumps because a lot of those were stuck on with some kind
17 of glue, very difficult to get off.

18 Q. All right. Now, one of the brands you mentioned for
19 lawnmowers is Toro. Do you recall that?

20 A. Yes.

21 Q. And you serviced Toro walk-behind lawnmowers while you
22 worked for Mr. Kinney, correct?

23 A. Correct.

24 Q. Did you do gasket work on them?

25 A. Occasionally, yes.

1 Q. Would it be possible for you to estimate for me how many
2 times you changed gaskets on a Toro lawnmower when you worked
3 for Kinney?

4 A. Oh, gosh, no, I can't.

5 Q. I think I already know this, but, you know, when you go to
6 the store and, even back then, and you buy a Toro lawnmower,
7 there's like -- you'll see like six of them in a row, and you
8 can pick between all the models and they go -- they increase in
9 horsepower and different features. Do you know any of the
10 model numbers or even the names of any of the Toros, or can you
11 just say they were Toros?

12 A. They were Toros.

13 Q. Okay. And what color were they?

14 A. Red.

15 Q. Yeah, they're all red, right?

16 A. Yeah, red sells.

17 Q. And I assume, but I don't know for sure, some of them were
18 side bag and some of them were rear bag?

19 A. Yes.

20 Q. And some of them were self-propelled and some of them
21 weren't?

22 A. Later in years, yes, at first they were just walk-behinds.

23 Q. All right. And with respect -- and this will apply to any
24 of the work I ask you about, but with respect to the gaskets
25 that you changed in the Toro motors, do you know what any of

1 them were made of?

2 A. On the Toro specifically, I want to say they were -- that
3 the head gaskets were asbestos.

4 Q. And how do you know that?

5 A. Because the two outer edges of it were metal, and then
6 there was white in between, sandwiched in between the two
7 sides.

8 Q. All right. Is it your testimony, sir, that when you were
9 working on a Toro lawnmower, the engine itself wasn't
10 manufactured by Toro? Does that sound right?

11 A. That's correct.

12 Q. Right?

13 A. It could have been a Briggs & Stratton and Toro put their
14 name on it.

15 Q. That's what I'm getting at. If you think about working on
16 a Toro lawnmower for Mr. Kinney back in '76 through '82, and if
17 you were looking at it and you needed to change the head gasket
18 on the engine, and you looked at the top of the motor, it's
19 going to say some other brand besides Toro?

20 A. Correct.

21 Q. Right. I mean, I'll represent to you that Toro didn't
22 make engines. Does that change anything or does that make any
23 sense?

24 A. It does because a lot of the lawnmower engine people would
25 -- like a Briggs & Stratton would put their motor on anyone's

1 mower back then, and that company would probably say it was
2 their own.

3 Q. Is it your understanding or your belief that the only
4 gaskets that you worked with while doing this lawnmower and
5 snowblower repair that may have contained asbestos were those
6 sandwich-type gaskets?

7 A. Those gaskets were sandwich-type gaskets. They were used
8 on the head gaskets, and they were used on the intake tube for
9 the carburetor that mounted to the engine.

10 Q. Right. I get that. What I'm asking you about is if --
11 there's a bunch of other gaskets that you might have
12 encountered during this work, and I just want to be sure that
13 we're clear that the only two that you believe might have
14 contained asbestos would have been the head and the carburetor,
15 those sandwich gaskets. Am I right about that?

16 A. That's right.

17 Q. Okay. All right. And so the other ones could have been
18 made of cork or rubber or paper. We don't have to talk about
19 any of those gaskets, correct?

20 A. Correct.

21 Q. Okay. Now, for either the head sandwich gasket or the
22 carburetor sandwich gasket, can you tell me what their size
23 were?

24 A. Well, the head gasket was probably six to seven inches
25 across.

1 Q. Okay.

2 A. Three to five inches tall, and with a whole lot of holes.

3 Q. Say it again. I didn't hear it.

4 A. I said with a whole lot of holes on the head gasket,
5 obviously.

6 Q. Sure. And what about the carburetor gasket?

7 A. The carburetor gasket was probably the size of a silver
8 dollar or a half dollar, somewhere in there.

9 Q. Okay. So were they roughly the same thickness?

10 A. Pretty much.

11 Q. And were they less than a quarter-inch thick?

12 A. Yes.

13 Q. So the biggest gasket that you believe might have
14 contained asbestos that you worked with doing the snowblower
15 and lawnmower repair would have been about six inches in
16 diameter, and the smallest one would have been about the size
17 of a silver dollar. Is that right?

18 A. That's correct.

19 Q. All right. And the material that you believe might have
20 been asbestos in either the head gasket or the carburetor
21 gaskets was located between two sheets of metal all the time?

22 A. Correct.

23 Q. All right. Are you able to give me an estimate of how
24 many times you did gasket work on lawnmowers in general,
25 irrespective of who made them, while you worked for Mr. Kinney?

1 A. Oh, gosh. Many times because the lawnmowers would come in
2 not running and you'd run a compression test on it to find out
3 is it the head gasket. Chances are that's what it is. So, you
4 know, you're just kind of verifying before you do the work.

5 Q. All right. But in terms of how many times per day or per
6 week or per month, are you able to give me an estimate?

7 A. I'd say four to five times a week, easily.

8 Q. Okay. And that's for all lawnmowers?

9 A. Correct.

10 Q. So four to five head gasket changes per week on all
11 lawnmowers, correct?

12 A. Correct.

13 Q. So do we have to add to that the other carburetor gasket
14 changes?

15 A. On some perhaps.

16 Q. Okay.

17 A. Excuse me. Not all of them.

18 Q. All right. So if you did four to five head gasket changes
19 per week on all of the lawnmowers, how many carburetor gasket
20 changes per week did you do on the lawnmowers?

21 A. I'd say three or four.

22 Q. Okay. And the process that you used to change the
23 carburetor gaskets, was it the same as the process that you
24 used to change the head gaskets?

25 A. Pretty much, yeah. You could usually get them off with

1 just a putty knife because that was like a paper gasket. It
2 wasn't -- now, I'm talking about the bowl of the carburetor,
3 not up to where it mounts to the engine.

4 Q. Right.

5 A. On the bowl, there would be like a rubber gasket there,
6 and a lot of times that would leak during operation.

7 Q. All right. But in terms of these sandwich gaskets that
8 we're talking about, the ones associated with the carburetor,
9 am I right that you say your estimate is that you changed three
10 to four of those per week on all lawnmowers?

11 A. Yeah, pretty much.

12 Q. And, again, that process is what I was interested in. The
13 process of changing the sandwich carburetor gasket is the same
14 or different from changing the sandwich head gasket?

15 A. It's pretty much the same.

16 Q. Okay. So some of them would come off in one piece, others
17 wouldn't, and you'd have to scrape them?

18 A. Yes, sir.

19 Q. Okay. Now, you also did some snowblower work, did you?

20 A. Yes.

21 Q. All right. And if I recall your testimony from yesterday,
22 you indicated that the snowblowers were powered with basically
23 the same types of small engines, but they were mounted
24 opposite, correct?

25 A. Correct.

1 Q. So the amount of -- strike it, please.

2 The type of gasket work would have been the same. You
3 would have been dealing with the head gaskets and the
4 carburetor gaskets. They would have just been in a different
5 position, and you would have to access them differently?

6 A. That's correct.

7 Q. All right. And much like with the walk-behind mowers,
8 with the snowblowers, the only two types of gaskets that you
9 believe might have contained asbestos are, again, the sandwich
10 head and the sandwich carburetor?

11 A. Correct.

12 Q. When we're doing --

13 MR. BRALY: Oh, I'm sorry. That's you. Go ahead.

14 Q. When we're doing our four to five times per week with the
15 lawnmowers, that can't extend over the whole 12 months of the
16 year, correct?

17 A. Correct.

18 Q. Because I don't want to put words in your mouth and I want
19 your best estimate, as best as you can remember it, and we're
20 going to accept it and we're going to move on, so I'm not
21 fighting with you. So this is your opportunity to make sure
22 that I understand your memory. That's it.

23 And maybe it was an incorrect assumption and you can
24 correct me. But I thought that the four to five times per week
25 would have applied to the busy part. You tell me if that's

1 correct or not.

2 A. Well, sometimes in the busier part, I mean, you could do
3 more than that.

4 Q. Okay. So let's do it this way. And I'm not going to
5 fight a fight I can't win. Is it your best memory that if you
6 look at a 12-month period, your average of changing head
7 gaskets on lawnmowers was four to five times per week?

8 A. That's correct.

9 Q. Okay. All right. Let's do it for snowblowers. Having in
10 mind the seasons and whatnot, what's your estimate for how many
11 times you changed head gaskets on snowblowers during the time
12 that you worked for Mr. Kinney?

13 A. Maybe a couple times a week, but you've got to remember
14 that's seasonal, and it's only a couple of months, and most of
15 the time people just don't want to pay money to have their
16 snowblower looked at, so they'll tinker with it themselves.

17 Q. Right. All right. So two times a week for about two
18 months of the year --

19 A. That sounds --

20 Q. -- head gasket changes on snowblowers, correct?

21 A. Yes.

22 Q. And carburetor gaskets, less than that?

23 A. No. They'd probably be about equal because usually --

24 Q. Okay.

25 A. Okay.

1 Q. Okay. So for head gaskets, for sandwich head gaskets and
2 sandwich carburetor gaskets, for all the snowblowers that you
3 worked on while you worked for Mr. Kinney, your best estimate
4 is that for about two months you changed about two a week?

5 A. Correct.

6 Q. Okay. And for Toro snowblowers, they would --

7 Okay. Let's move on now to Merrow's, and I understand
8 that is just -- my understanding is that work began in 1985.
9 So if I look at -- well, let's just leave it at that. That
10 work started in 1985 while you were working your first shift at
11 Bailey, correct?

12 A. Correct. At that time Bailey was now called Amesbury
13 Industries.

14 Q. Okay.

15 A. Same company. They just changed the name.

16 Q. How many hours per week did you work at Merrow's?

17 A. Well, I would work 7:00 to 3:00 at Amesbury, and Merrow's
18 was only a couple of miles away, so I'd drive there in the
19 afternoons, and I'd work there until probably 8:00 at night
20 some nights.

21 Q. So if you got off work at 3:00, you started --

22 A. 3:30.

23 Q. 3:30?

24 A. Yes.

25 Q. And then you'd work sometimes until 8:00?

1 A. Yes.

2 Q. So sometimes you'd work four and a half hours?

3 A. Yes.

4 Q. All right. And were there other times that you'd work
5 less than that?

6 A. Yes, just because of how, how many he had ahead of him,
7 you know, excuse me, to work on.

8 Q. All right. And you worked Saturdays as well?

9 A. Yeah, Saturdays were usually like 8:00 until 2:00.

10 Q. And are you able to give me an estimate, sir, as to how
11 many hours per week you put in at Merrow's between 1985 and
12 1989?

13 A. Somewhere around 23 hours, 25 hours.

14 Q. Okay.

15 A. It just depended on how buried up he was and how much he
16 needed me or didn't need me.

17 Q. All right. And this work was done in the repair shop,
18 which is in the back of the building?

19 A. Yes, sir.

20 Q. And was Merrow's an authorized Toro dealer?

21 A. Yes.

22 Q. Okay. And you know what I forgot to do, I'm really sorry,
23 back at Kinney, and this may or may not apply, but one of the
24 brands that you recall in your list was Honda. Do you recall
25 that?

1 A. Yeah. Yes, sir.

2 Q. Did you work on any Honda lawn and garden equipment for
3 Mr. Kinney?

4 A. Occasionally, because Honda was fairly new at the time in
5 the marketplace. They were walk-behind mowers.

6 Q. And do you recall -- go ahead.

7 A. I was going to say they were quite different than any
8 other engine I ever saw, the way they had the timing belt
9 inside and all that. That was totally different.

10 Q. Okay. And did you repair Honda walk-behind mowers while
11 working for Mr. Kinney?

12 A. Only to do a basic tune-up, you know, or replace a spark
13 plug, make sure it had spark, sharpen the blade, lubricate the
14 wheels.

15 Q. Did you do any gasket work on any walk-behind mowers at
16 Kinney's?

17 A. No.

18 Q. Did you do any other work on any Honda equipment at
19 Kinney's --

20 A. No.

21 Q. -- be they --

22 A. No.

23 Q. So no snowblowers?

24 A. No, sir.

25 Q. Back to Merrow's -- I'm sorry -- Merrow's was not a Toro

1 dealership?

2 A. As far as I know, he was, and he had others as well.

3 Q. So let's talk in general then. For all the walk-behind
4 mowers, are you -- is it -- strike it, please.

5 For all the walk-behind mowers, your description of the
6 sandwich gasket work, be it head or carburetor, was that the
7 same while you were doing your work at Merrow's as it had been
8 for Mr. Kinney?

9 A. Yes, sir.

10 Q. All right. What is your estimate for the amount of head
11 gasket changes that you did on lawnmowers while at Merrow's per
12 week?

13 A. Three or four.

14 Q. And the same question for carburetor gaskets.

15 A. Three or four.

16 Q. Okay. When you say that others may have, would that have
17 been true at Kinney? In other words, Mr. Kinney might have
18 been changing Honda gaskets while you were around, or no?

19 A. He could have been, and I just don't know. I mean, at any
20 given in point in time there may have been 40 mowers out there
21 to work on.

22 Q. For any of the sandwich gaskets, either the carburetors or
23 the heads, for any of the lawnmowers that you worked on and any
24 of the snowblowers that you ever worked on, when you're taking
25 the old one out, is it true that you couldn't tell who made the

1 gasket you were removing?

2 A. There was nothing printed on the gasket that could tell
3 you.

4 Q. Right, right. So if it was an engine that someone else
5 worked on that they had done work, you just don't know whether
6 or not the one you were taking out was original to the piece of
7 equipment when it was sold or whether it had been changed out.
8 You just can't tell one way or the other?

9 A. You can't tell, but chances are it was made by the engine
10 manufacturer.

11 Q. But there wasn't anything that would have -- that you
12 could read or see that would tell you -- I'm sorry -- that you
13 could read or see that would tell you while you were doing that
14 work? That's what I'm getting at.

15 A. The only way you knew is that, like at her Herman's, you
16 would take the head gasket out of the box that it was in, and
17 it was in a sealed plastic bag, and it would say Briggs &
18 Stratton on it.

19 Q. No, right. I'm talking about the ones you were talking
20 about, the old ones.

21 A. Oh, no, you don't know.

22 Q. So at Herman Kinney's place, which was that, a three-car
23 garage?

24 A. Yes.

25 Q. Can you give us the approximate dimensions of the interior

1 of the -- of that garage space, meaning all three together?

2 A. Well, I mean, you could put three cars in there and still
3 have a little work area at one end. So I would probably
4 estimate 25 foot, 30 foot --

5 Q. Okay.

6 A. -- across.

7 Q. Yeah, wide. And what about the depth?

8 A. The depth would probably be about 15 feet.

9 Q. Okay. And how about the ceiling height?

10 A. Ceiling height, probably 15 foot at the center of the
11 peak.

12 Q. And when you were working for Mr. Kinney, weather
13 permitting, were the doors kept open?

14 A. Yes.

15 Q. And when you were working for Mr. Kinney, was some of the
16 work that you did performed outside, meaning not in the area of
17 the garage?

18 A. Yes, out in the driveway.

19 Q. Yeah. And the type of work that you would do outside the
20 driveway -- let me start that again.

21 Yeah. And what type of work would you do outside in the
22 driveway for Mr. Kinney?

23 A. Well, first off, the rotary motors -- I'm sorry -- the
24 rotary mowers would come in from the customer, and the first
25 thing he wanted me to do was to wash them down real good with

1 gasoline and then hose them down with an air hose to make them
2 look, you know, clean and fresh, and now we could actually see
3 what we were working on.

4 Q. Okay. And just to be as efficient as possible, let me
5 limit the questions for you that you did outside for
6 Mr. Kinney. Did any of that involve gasket work?

7 A. No.

8 Q. All right. So then switching to Merrow's now. You worked
9 in the area of Merrow's where the repair shop was; is that
10 correct?

11 A. Correct.

12 Q. And is that the correct way to refer to it, as a repair
13 shop?

14 A. Yes, it is.

15 Q. Can you estimate for us the dimensions of that, what that
16 repair shop were?

17 A. Well, the area that we worked in was probably 12 foot deep
18 by 30 foot, and there was pneumatic tables in there to raise
19 the mowers up so they'd be like raised high so you weren't
20 bending over them all the time to work on them.

21 Q. How many pneumatic lifts did Merrow have while you were
22 working there?

23 A. Three.

24 Q. I think you gave us the dimensions front to back and side
25 to side. Do you recall at the repair shop what the height of

1 the ceiling were?

2 A. Probably 12 feet.

3 Q. Okay. And did the repair shop have like a garage door
4 that allowed larger equipment to come in?

5 A. Yes.

6 Q. And did the repair shop have any type of windows?

7 A. Yes.

8 Q. And weather permitting, would the door and the windows be
9 kept open?

10 A. Yes.

11 Q. Again, limiting the question to work that you may have
12 done outside of Merrow's, did any of that involve gasket work?

13 A. No.

14 Q. When you were talking about the different types of gasket
15 work that you did on push-behind mowers and the snowblowers,
16 you discussed head gaskets, carburetor gasket and the sump
17 gasket work.

18 A. Yes.

19 Q. And you told Attorney Sbarra that sometimes there would be
20 metal, I call them metal clad gaskets. Did you ever hear that
21 term, or did you call them sandwich gaskets?

22 A. Sandwich gaskets.

23 Q. Okay.

24 A. Sorry.

25 Q. No, totally fine.

1 Sometimes the sandwich gaskets would release easily, and
2 sometimes they had to be scraped off. Do you recall that for
3 those three different types of sandwich gaskets?

4 A. Yes.

5 Q. For head gaskets, whether you were working for Mr. Kinney
6 or Merrow's, would you be able to provide any type of estimate,
7 without guessing, as to how often it was that sandwich head
8 gaskets would stick to the surface versus releasing more
9 easily?

10 A. Oh, gosh, it was a good part of the time. I mean, 45
11 percent of the time they'd be stuck.

12 Q. Okay. And how about the same question with respect to
13 those sandwich carburetor gaskets?

14 A. Those came off easier. I mean, if there was one stuck on
15 there, it may be at 20 percent.

16 Q. Okay. So 20 percent of the time it would stick, 80
17 percent of the time, approximately, it would release freely?

18 A. On the carburetor, yes.

19 Q. Yes. And the same question with respect to the sump
20 gaskets?

21 A. That was a different beast there. That was made out of
22 gasket material, if you would. It was black. And a lot of
23 people used to use an adhesive to stick them down, both sides
24 of the gasket, so when they sandwich them between the sump and
25 engine itself, it would stop any leaks.

1 Q. So that would stick more often than either the head gasket
2 or the carburetor sandwich gaskets?

3 A. Yes.

4 Q. And can you estimate approximately what percent of the
5 time it would tend to stick?

6 A. Oh, gosh. Probably 60 percent of the time for that one.

7 Q. Okay. Thank you for that.

8 Now, for the sandwich gaskets that, again, involved two
9 pieces of metal, with what you believe to be asbestos
10 sandwiched in between the two pieces of metal; is that correct?

11 A. That's correct.

12 Q. How, if at all, would you come into contact with the
13 material in the middle?

14 A. Well, when you're taking it from the package that it came
15 in, if it came in a package, you're handling that package and
16 you've got to open it and there's particles in the bag.

17 Q. Okay.

18 A. And in applying the gasket to the engine, before you can
19 do that, you've got to use compressed air to blow all that crap
20 out of there.

21 Q. But if you're taking out -- if you're talking about, say,
22 a new -- let's just take, for right now, we'll talk about
23 removing. But if you have a new sandwich gasket, you talked
24 about the particles being in the back of a new gasket and
25 then --

1 A. Yes.

2 Q. -- how else, if at all, would you come into contact with
3 that material in the middle when you're working with a new
4 sandwich head or carburetor gasket?

5 A. I mean, if there was fibers on the sandwich gasket that
6 you didn't see, you're handling it with your bare hands.

7 Q. Okay. And is there any other way for a new sandwich
8 gasket that you may have encountered the material in the
9 middle, other than what you've just described for us?

10 A. No.

11 Q. Okay. Now, let's talk about the removal of either
12 carburetor or head sandwich gaskets. How, if at all, would you
13 come into contact with the material in the middle when removing
14 on old sandwich gasket either at Merrow's or Mr. Kinney's?

15 A. Generally, when you took the head off, you only got part
16 of the gasket on the head, and the rest remained on the engine.
17 So therefore, you had to -- you had the outer metal part on the
18 head itself that you got in your hand, and then you've got
19 exposed asbestos. And then you've got to get the rest of the
20 metal sandwiched against the engine. So now you've got to
21 scrape all that stuff off.

22 Q. So if I understand you correctly, on one of those
23 occasions where the gasket would be stuck on, the two pieces of
24 metal would separate from one another exposing the material in
25 the middle?

1 A. Correct.

2 Q. But that would be the only -- but that would only be if
3 the gasket stuck on; is that correct?

4 A. Correct.

5 Q. Okay. With respect to the removal of the sandwich gaskets
6 other than when the two pieces of metal separated from one
7 another, can you think of any other way that you may have come
8 into contact with the material in the middle when removing
9 these sandwich style gaskets?

10 A. Well, when removing, you would have to be certain that you
11 got it all, all the pieces, et cetera, out, and the way to do
12 that was with compressed air.

13 Q. Okay. So even if the gasket didn't separate, what you're
14 saying is once it was removed, you would certainly -- you would
15 generally use compressed air to kind of clean out the area?

16 A. Correct.

17 Q. Okay. Does that now complete your answer?

18 A. Yes.

19 Q. Okay. So since we've been talking about gaskets that
20 stick sometimes, again, whether you were at Mr. Kinney's or
21 working for Merrow's, if you had a stuck sandwich style head
22 gasket, can you give me an estimate as to how long it would
23 take to remove the stuck-on gasket?

24 A. 15 to 30 minutes, depending.

25 Q. And if it took 15 to 30 minutes, can you just tell us what

1 the steps would be, or did you describe that previously when
2 you talked about using the putty knife and this razor scraper?

3 A. That's it.

4 Q. Okay.

5 A. Sometimes it got -- sometimes you got to work a little
6 harder at it than others.

7 Q. Yeah. And again, you have to be careful in how you scrape
8 it so you don't score the metal surface --

9 A. Right.

10 Q. -- and have future leaking issues?

11 A. Correct.

12 Q. Can you estimate for us how long it took to remove a
13 sandwich carburetor gasket when you were working at Kinney's
14 and Merrow's?

15 A. Well, once you got the carburetor intake off, it would
16 probably take you just five minutes or so.

17 Q. That's if it was stuck?

18 A. If it wasn't stuck.

19 Q. Oh, no, no, no, no. My question is, so let's assume that
20 the carburetor gasket, the sandwich style, in fact, stuck. I
21 know it didn't happen most of the time, but let's assume that
22 it stuck.

23 A. Okay.

24 Q. And you needed to remove any residue that it left behind.
25 How long would that take approximately?

1 A. Ten or 15 minutes.

2 Q. And would the process that you followed to remove the
3 gasket material be any different than what you described for
4 the head gasket removal?

5 A. No.

6 Q. And then if you're removing material because it's stuck,
7 if you had -- if you have a metal sandwich gasket touching a
8 metal surface of the engine, what is it that sticks? Is it
9 like metal that gets melted onto it? What are you removing?

10 A. It was mostly carbon that is built up and causing the
11 gasket to be stuck.

12 Q. Okay. And then with respect to a sump gasket, this was a
13 type of gasket that stuck the most frequently you said,
14 correct?

15 A. Yes.

16 Q. Assuming you have a stuck sump gasket, approximately how
17 long would it take to remove one of those?

18 A. It could take you an hour. I mean, if you've got it, you
19 know, like a spray material that you can spray onto it to kind
20 of soften the gasket.

21 Q. Yeah. And was that the process that you followed to
22 remove a sump gasket any different --

23 MR. CHAPMAN: I'm going to start again. I'm sorry.

24 MR. BRALY: Mh-hmm.

25 Q. And was the process that you followed to remove a sump

1 gasket any different than what you described for a head gasket
2 removal?

3 A. No.

4 Q. And similar to my prior question for the sandwich gaskets,
5 when you're removing the stuck-on material, could you tell what
6 it was?

7 A. No. Some of it was the metal, some of it was the sandwich
8 in between. It was a mixture.

9 Q. So focusing now just at Merrow's, when Attorney Sbarra was
10 asking you certain questions, he discussed with you the
11 push-behind mowers, but you did not discuss with him
12 snowblowers. So I just want to focus on snowblower work for a
13 moment at Merrow's.

14 A. Okay, yeah. That was limited.

15 Q. That was actually going to be my first question. I know
16 you said that you didn't do any snowblower work for Toros, but
17 generally speaking, at Merrow's, did you not tend to do a lot
18 of snowblower work?

19 A. No, because the other guys I worked with there took care
20 of that more than me because I was only part time. But he
21 focused -- he had me focused on the rotary mowers.

22 Q. Okay. So did you do any snowblower work at Merrow's?

23 A. Very little. I could put a belt on or --

24 Q. Can we -- again, I'm not trying to put words in your
25 mouth. I'm just trying to move it along. For snowblowers at

1 Merrow's, would it be fair to say that you did not do any
2 gasket work on snowblowers?

3 A. There could have been a head gasket and, again, belts,
4 chains to make the auger go.

5 Q. Yeah. But specific to Merrow's and snowblowers. Would
6 you have any way of estimating how often it was that you did
7 gasket work at Merrow's on snowblowers?

8 A. No.

9 Q. Would it be fair to say to whatever extent you did that
10 work, it would have been very limited?

11 A. Yes, that's correct.

12 Q. At any point in time, when you were working for Mr. Kinney
13 or for Merrow's, did you ever see any type of warning related
14 to asbestos that was on the packaging of or literature of any
15 type?

16 A. Never.

17 Q. At any point in time when you worked for Mr. Kinney or
18 Merrow's, did you ever have a discussion with anybody,
19 Mr. Kinney or anyone, that owned or worked with Merrow's about
20 the presence of asbestos in any of the products you worked
21 with?

22 A. No.

23 Q. At any point in time when you did work for Mr. Kinney or
24 at Merrow's, did you ever wear any type of mask or anything
25 over your mouth or nose to prevent dust from being breathed in?

1 A. No.

2 Q. Okay. My question for Briggs & Stratton is, to the extent
3 you can recall for the push-behind mowers that had Briggs &
4 Stratton engines, can you tell me what the range of horsepower
5 engines was that you would have worked on?

6 A. Pretty much three horsepower. I mean, that was a pretty
7 common engine back then.

8 Q. Yeah, okay. For Briggs & Stratton specifically, can you
9 remember any other engines that were Briggs & Stratton that
10 were different than the three horsepower?

11 A. Sometimes you might see a three and a half or a four but
12 rarely.

13 Q. All right. So for Briggs & Stratton motors, that would
14 have been on the push-behind lawnmowers, whether you were
15 working for Mr. Kinney or at Merrow's, they would either be --
16 mostly with three horsepower, but you would occasionally see a
17 three and a half or a four; is that accurate?

18 A. Yes.

19 Q. And for those -- for these Briggs & Stratton motors on the
20 push-behind mowers, would they all be four-stroke that you
21 worked on?

22 A. Yes.

23 Q. And how many cylinders?

24 A. One.

25 Q. And then focusing again on Briggs & Stratton engines that

1 were on snowblowers, you previously testified in general that
2 the snowblowers you tend to see were three to five horsepower
3 motors on snowblowers. Is that accurate?

4 A. That's accurate for back then, yes.

5 Q. Okay. And that would also be true specific to Briggs &
6 Stratton engines that would be on snowblowers, correct?

7 A. Correct.

8 Q. Okay. For any Briggs & Stratton engine that you worked
9 on, can you recall any model name or model number?

10 A. No. They used a long numbering system. To remember any
11 of that, no.

12 Q. Okay. When you were working for Mr. Kinney, do you have
13 any idea of where he sourced any of his parts from?

14 A. Mostly from the manufacturer. Like for Briggs & Stratton,
15 he would go directly to Briggs & Stratton and others because he
16 had these manuals that were provided by Briggs & Stratton, and
17 you could, you know, look up part numbers and order
18 effectively.

19 Q. Now, do you know whether he went directly to the company,
20 or do you know whether or not they had, you know, some kind of
21 parts supplier that he went to that carried Briggs parts?

22 A. That I don't know. All I know is he ordered the parts and
23 they'd be there within a week.

24 Q. Okay. And with respect to Briggs & Stratton engines that
25 you worked on at either Kinney's or Merrow's, do you associate

1 Briggs engines being in any particular brand of push-behind
2 mowers or snowblowers?

3 A. Gosh, there's so many machines that had Briggs & Stratton
4 engines in them, I mean, Yard-Man comes to mind, Troy-Bilt, I
5 mean, a whole list of them.

6 Q. Okay.

7 A. And yes, you'd find the Briggs engine -- hold on a second.
8 You'd find the Briggs engine but an upright engine on a
9 snowblower or a rototiller.

10 Q. One of the brands of mowers that you mentioned was Bolens.
11 Are you familiar with that name?

12 A. I am.

13 Q. Okay. Did you work with Bolens walk-behind mowers at
14 Mr. Kinney's --

15 A. Yes.

16 Q. -- business?

17 A. Yes.

18 Q. And did you work with Bolens walk-behind mowers at
19 Merrow's?

20 A. Yes.

21 Q. Do you know who -- do you know the manufacturer of the
22 actual engine for any Bolens machine that you may have worked
23 with?

24 A. I believe they were Briggs & Stratton engines.

25 Q. Okay. Continuing along, again, the lines we've been

1 talking about for the last hour or so, one of the brands that
2 you list in terms of walk-behind push mowers was Roper. Do you
3 recall working on any Roper lawnmowers?

4 A. Yes.

5 Q. And did you work on Roper lawnmowers at Mr. Kinney's
6 establishment?

7 A. Yes.

8 Q. And also at Merrow's?

9 A. Merrow's, yes.

10 Q. Okay. With respect to carburetor gaskets, did you do that
11 type of work on Roper mowers as well?

12 A. Yeah. Sometimes the intake tube gasket would be blown and
13 that was the sandwich type because it mounted directly to the
14 engine.

15 Q. Okay. Is that gasket different than the carburetor
16 gasket?

17 A. The carburetor gasket would have been like a paper, almost
18 like a paper or a little bit thicker than paper, so, yeah, they
19 were different.

20 Q. And this carburetor gasket, is that particular to a Roper
21 lawnmower, or are you just talking generally?

22 A. In general, the Briggs & Stratton, all of them use
23 basically the same method on all of them.

24 Q. I guess that leads into the next question then. In terms
25 of the engine that was on a Roper lawnmower, do you recall who

1 made that?

2 A. Briggs.

3 Q. All right. So you only associate the name Kohler with
4 engines on pieces of equipment. Is that fair to say?

5 A. That's fair to say.

6 Q. All right. And did you work on Kohler engines at
7 Kinney's?

8 A. Yes.

9 Q. All right. And what about at Merrow's?

10 A. Yes.

11 Q. For Kinney, would you be able to tell me what pieces of
12 equipment you associate the Kohler engine with at Kinney's?

13 A. At Kinney's, he had an old snowplow, a front-end plow that
14 had a Kohler engine on it. And that's how I got acquainted
15 with the Kohlers.

16 Q. All right.

17 A. It's a pretty big engine.

18 Q. Okay. So there was a Kohler engine on the snowplow?

19 A. Yes.

20 Q. All right. I'm trying to figure out what this -- when I
21 think of snowplow, sometimes I think of maybe just a blade
22 that's put on a pickup truck or a big truck.

23 A. Oh, no. On like a garden tractor but it's a good size
24 one.

25 Q. Okay. So the Kohler engine was on one of those kind of

1 riding tractors, is that what you're referring to?

2 A. Yes, yes, sir.

3 Q. Do you know who made the riding tractor?

4 A. I don't.

5 Q. Do you know the year or the model, the year of the riding
6 tractor?

7 A. No.

8 Q. Do you recall the size of this Kohler engine on this
9 tractor, the riding tractor?

10 A. I want to say it was like 16 horse.

11 Q. Okay. And in terms of the number of cylinders?

12 A. One.

13 Q. Single cylinder, okay. And any sort of model name or
14 model number that you associate with this Kohler engine?

15 A. No.

16 Q. What work do you recall performing on this Kohler engine
17 that was a part of this tractor/snowplow combination?

18 A. I worked on the carburetor quite a bit.

19 Q. Other than working on the carburetor quite a bit, any
20 other memory of work done on this particular Kohler engine?

21 A. Well, points and plugs and, of course, general tune-up.

22 Q. Okay. So you did a general tune-up. You kind of did,
23 again, those points, plugs work on that to get just the engine,
24 routine stuff, correct?

25 A. Routine, yes.

1 Q. All right. But part of that work was involving the
2 carburetor, is that fair to say?

3 A. Yes, yes.

4 Q. So what exactly did that work entail?

5 A. Well, taking the carburetor off, taking it completely
6 apart and cleaning out the nozzles inside. You had to use a
7 fine wire to get through those little nozzle holes.

8 Q. Okay, yeah.

9 A. And then you put it back together. And this time you
10 would say, well, that's not going to happen again because you
11 put a fuel filter on it so it wouldn't happen again.

12 Q. Okay. We'll break it down a little bit more, this work,
13 but other than this work on the Kohler engines and the
14 snowplow, any other Kohler work that you performed while you
15 were part time at Kinney's?

16 A. No.

17 Q. Okay. So when you took apart the engine, did any of that
18 involve gasket work?

19 A. I didn't take apart the engine. I took apart the
20 carburetor.

21 Q. Oh, I'm sorry. Thank you. I'm sorry. When you took
22 apart the carburetor, did that involve any gasket work?

23 A. Ah, yes.

24 Q. What gaskets were you working with as a part of this
25 carburetor repair?

1 A. Where the carburetor actually mounted to the intake tube
2 that was going to the engine.

3 Q. Okay.

4 A. And, again, that was just a -- I mean, it was black and it
5 was kind of -- I don't know if it was even one-sixteenth thick
6 material and had a couple of holes in it so you could put your
7 bolts through to mount to the carburetor.

8 Q. Yeah, okay. Was that the only gasket work that was
9 involved in this carburetor work?

10 A. Well, the bowl had a gasket.

11 Q. When you say "bowl," what are you referring to?

12 A. The fuel bowl in the bottom of the carburetor.

13 Q. Okay. Did you have to work with that fuel -- the gasket
14 as it pertains to the fuel bowl?

15 A. Yes.

16 Q. Okay. And what did you have to do with that gasket?

17 A. Normally we made them out of gasket material which, again,
18 you can get in an auto supply. I've got some out in my garage
19 just in case.

20 Q. So besides the gaskets and the intake tube and the fuel
21 bowl gasket, any other gasket work associated with this
22 particular carburetor work that you did?

23 A. No.

24 Q. On the intake tube gasket, you described it as a black
25 gasket?

1 A. Yeah, same material I was just saying at the auto store.
2 It comes in a roll and they're different thicknesses.

3 Q. Okay. Do you recall the thickness of this particular
4 gasket that was a part of the intake tube?

5 A. I don't.

6 Q. Do you recall the dimensions of it, how big around are we
7 talking?

8 A. Gosh, probably the size of a half dollar, maybe a little
9 bigger.

10 Q. And you were asked earlier in terms of the removal of the
11 gaskets, oftentimes they would come right off. Sometimes they
12 might need a little work. With respect to the intake tube
13 gasket, do you have a recollection, one way or the other, in
14 terms of removing that gasket?

15 A. That would seem to come off pretty easily.

16 Q. Were you able to tell who made that black half-dollar size
17 intake gasket?

18 A. No.

19 Q. The replace -- I'm assuming that that gasket had to be
20 replaced; is that fair to say?

21 A. It's fair to say, but a lot of those old Kohler engines,
22 the old-timers, they made their own gaskets.

23 Q. Okay. And did you make your own gaskets at Kinney's for
24 this particular job?

25 A. He probably made it. I put it on.

1 Q. All right. Do you have any memory of what he utilized,
2 and by "he" I mean Mr. Kinney, what he utilized to make this
3 replacement gasket?

4 A. A pair of scissors, and then you had these punches that
5 had different size holes that he would just put over wherever
6 he wanted the hole to be, and he'd hit it with a hammer, and
7 you get the proper sized hole. Like, if you wanted a hole for
8 a 1/4--20, you know, you would use a certain punch for that.

9 Q. And he had those kinds of tools in his garage, right?

10 A. Yes.

11 Q. And he was the one, I think you said, that made this
12 replacement gasket, right? He was the one who did the
13 punch-out and the cutting work?

14 A. Yes.

15 Q. And then at some point he handed it to you and you just
16 put it on?

17 A. I put it on, yeah.

18 Q. Okay. Any other work involved in that intake gasket,
19 other than what you've just described?

20 A. No.

21 Q. So then you said the other gaskets that you had to replace
22 was the ones as a part of the fuel bowl; is that correct?

23 A. Yes.

24 Q. All right. Can you describe that gasket for me.

25 A. That gasket, if you turn the carburetor upside down and

1 you could pick that gasket out of there, some of them were made
2 of cork; others were made of this gasket material.

3 Q. Do you recall if this one was made out of cork or the
4 gasket material?

5 A. I'm thinking the gasket material because, I mean, that's
6 what he gave me to put in, so.

7 Q. Okay. Did you, yourself, remove the fuel bowl gasket?

8 A. No. He had it all apart on the bench because this was his
9 own machine.

10 Q. Okay. All right. So you were not then involved with the
11 removal of this fuel bowl gasket, correct? It was already
12 done?

13 A. Correct. It was already removed, waiting for me to put
14 back together.

15 Q. Got you. All right. He did half the job and you just
16 kind of did the other half and put it back together?

17 A. Pretty much.

18 Q. Okay. In terms of the replacement gasket then, is it kind
19 of like the intake tube gasket? He made it and you just
20 installed it?

21 A. Yes.

22 Q. Do you know what he utilized for this replacement fuel
23 bowl gasket?

24 A. Again, it was on a roll. I remember that.

25 Q. But who made that roll and where he got it from, you don't

1 know?

2 A. I'm sure he got it from a store called Jack's Auto Parts
3 in Amesbury. That's where he bought all of our stuff there.

4 Q. So did he buy a lot of those, that stuff for use in the
5 lawn equipment that he was repairing?

6 A. Some.

7 Q. Okay. How long do you think it took to put the fuel bowl
8 back together? I know that Mr. Kinney had taken it apart. How
9 long did it take you to fix where you put the new gasket and
10 tightened everything up?

11 A. Probably 25 minutes.

12 Q. And with respect to the intake gasket, did you do that
13 work, in other words, did you remove and put it back in?

14 A. Yes.

15 Q. Okay. So you did that entire part, but it was Mr. Kinney
16 who did the fuel bowl part?

17 A. Yeah. The thing that took the time on the fuel bowl was
18 that the float had to be adjusted to a certain thousandth of an
19 inch so it wouldn't flood. If it flooded, you had to take it
20 all apart again.

21 Q. So you had to be pretty precise with that and to be
22 careful with it?

23 A. Correct.

24 Q. All right. Other than this work with one Kohler engine on
25 the snowplow, any other work at Kinney's that involved Kohler

1 engines?

2 A. No.

3 Q. Did you work on any Kohler engines at Merrow's?

4 A. Not that I can recall.

5 Q. Do you recall anyone else working on Kohler engines in
6 your presence while you were working at Merrow's?

7 A. Some of the other guys could have worked on them, but, I
8 mean, I wouldn't have noticed because we were busy doing what I
9 was doing.

10 Q. So if they were, you wouldn't know what they were doing
11 because you were concentrating on what you were tasked with; is
12 that fair to say?

13 A. Yeah, we had all -- I'm sorry. We had job tickets and
14 basically, you know, you did what the ticket said.

15 Q. Okay. All right. So the one Kohler product that you can
16 recall working with and around would have been that one engine
17 that was a part of the snowplow riding tractor at some point in
18 time at Mr. Kinney's; is that fair to say?

19 A. Yes.

20 Q. Okay. And that is the nature and extent of your memory of
21 working with and around Kohler products either at Kinney's or
22 Merrow's?

23 A. Yes, because, you know, I was all new at this kind of
24 stuff and Herman was training me, you know, and there were so
25 many different brands and whatnot. And then when I'd see a

1 great big engine by Kohler, it was like, wow, you know, you
2 didn't even know they made them that big.

3 Q. That's the only one that sticks out in your memory; is
4 that fair?

5 A. Yes, sir.

6 Q. So while you were at Kinney's, did you work on any
7 walk-behind lawnmowers manufactured by Ariens?

8 A. We could have worked on a couple, yes.

9 Q. Do you have any recollection as to what -- who the
10 manufacturer of the engine in an Ariens lawnmower is?

11 A. I want to say Tecumseh.

12 Q. Okay. And did you have a specific memory of working on an
13 Ariens snowblower with respect to taking off or removing a
14 gasket?

15 A. No. Just basic tune-ups.

16 Q. I want to talk to you about Tecumseh engines. You just
17 mentioned that you think there was a Tecumseh in the Ariens
18 walk-behind lawnmower; is that correct?

19 A. Yes.

20 Q. Do you associate Tecumseh with any other manufacturer of
21 lawnmower, other than Ariens, that you can recall?

22 A. Sometimes -- well, many times they were on the Craftsman
23 as well.

24 Q. Do you recall working on any Tecumseh engines while you
25 were at Kinney's?

1 A. Yes.

2 Q. Do you recall working -- recall any Tecumseh engines when
3 you were working at Merrow's?

4 A. Yes.

5 Q. Other than in the Ariens and Craftsman push-behind
6 lawnmowers, do you associate Tecumseh engines with any other
7 type of equipment, meaning snowblowers?

8 A. Well, yeah, they'd be a snowblower, sure.

9 Q. Do you remember the manufacturer of any of the snowblowers
10 where you might have encountered a Tecumseh engine?

11 A. The Ariens.

12 Q. Any others?

13 A. Right off the top, no.

14 Q. Okay. Going back to the Tecumseh engines and the push
15 mowers, what horsepower were those?

16 A. Three.

17 Q. Were they four-stroke engines?

18 A. Yes.

19 Q. Single cylinder?

20 A. Yes.

21 Q. How about the snowblowers, what horsepower were those?

22 A. They were like five.

23 Q. How is it that you knew that all these were Tecumseh
24 engines?

25 A. Well, Tecumseh engines had a decal mounted in the top

1 shroud of the engine that looked like an Indian, and that's how
2 it got its name, Tecumseh. Something to do with the Indians.
3 I can't exactly explain it, but.

4 Q. Okay. What did the decal look like? You said it was an
5 Indian. Was it a face? Was it something else?

6 A. It was like a profile and it was red. I remember red,
7 black and white. So at a glance, you could say, hey, that's a
8 Tecumseh engine.

9 Q. Do you know any model numbers of the Tecumseh engines that
10 were on these lawnmowers?

11 A. No, I do not.

12 Q. Same applies for the snowblowers?

13 A. Yes.

14 Q. Earlier you responded to another defense counsel that you
15 weren't sure where Mr. Kinney got his parts. Do you have any
16 idea where Mr. Kinney would have gotten his parts for Tecumseh
17 engines?

18 A. Probably through, I want to say through --

19 MR. BRALY: I'm sorry, I said that wrong.

20 A. Probably through, I want to say through Sears.

21 Q. Okay. Do you know specifically where Mr. Kinney might
22 have gotten parts for Tecumseh engines?

23 A. I just answered that. I think it was through Sears.

24 Q. Okay. I was just making sure I understood you correctly.

25 A. Oh, okay. I'm sorry. It's been a long day.

1 Q. I understand, believe me. You're being a trooper. Thank
2 you.

3 Where would that Sears have been?

4 A. Probably, I remember one in Methuen, Mass.

5 MR. BRALY: Forgive me. Out-of-town names.

6 Q. Do you recall doing any of the gasket work that you talked
7 to us about today on Tecumseh engines?

8 A. Yes. Sometimes you'd have a blown head gasket.

9 Q. Can you tell me how many times you might have replaced a
10 head gasket on a Tecumseh engine?

11 A. Not right off the top. It wasn't very often. I mean, I
12 didn't work on those if I could avoid it.

13 Q. Can you tell me how many times you might have encountered
14 a Tecumseh engine generally. Would it be more or less than
15 some of the other manufacturers?

16 A. Less than the others.

17 Q. On your list you have Cub Cadet, Yard-Man and MTD listed
18 as mowers. Those are the push-behind mowers that we've been
19 discussing for the last two days; is that correct?

20 A. That's correct.

21 Q. And I know that a lot of these are lumped in together.
22 Can you tell me if you feel like you worked on a Cub Cadet at
23 both Kinney's and Merrow's?

24 A. Yes.

25 Q. Do you think you worked on a Yard-Man at both Kinney's and

1 Merrow's?

2 A. Yes.

3 Q. And do you think you worked on MTD products at both
4 Kinney's and Merrow's?

5 A. Yes.

6 Q. Were all these -- let me strike that. Were any Yard-Man,
7 Cub Cadet or MTD products two-cycle?

8 A. No.

9 Q. Were they all four-stroke, one cylinder?

10 A. Yes, sir.

11 Q. Do you know the engine manufacturer for the Yard-Man push
12 mowers?

13 A. I believe it was Briggs & Stratton.

14 Q. Okay. Same question with respect to the Cub Cadet. Do
15 you remember the manufacturer of the approximately
16 three-horsepower engines on those push-behind mowers?

17 A. Briggs & Stratton.

18 Q. How about with respect to MTD, do you recall the engine
19 manufacturer of the push mowers?

20 A. MTD? Oh, yeah, sorry. Briggs & Stratton, sorry.

21 Q. You've given testimony about tune-ups and routine point
22 work and that type of stuff. Did you do that work on Yard-Man
23 push-behind mowers?

24 A. Yes.

25 Q. Did you do that work on Cub Cadet push-behind mowers?

1 A. Yes.

2 Q. Did you do that work on MTD push-behind mowers?

3 A. Yes.

4 Q. Are you able to give me a percentage or an estimate of the
5 time that you worked on Yard-Man versus other manufacturers?

6 A. They were all pretty much the same. I mean, given the
7 fact that they were mostly all Briggs & Stratton engines and
8 they all looked the same, I mean, you're going through the same
9 procedure for all three.

10 Q. Mr. Cook, how you doing? It's Chris, of course, and I
11 hopefully have just a few questions. I know it's been a very
12 long couple of days, and I really don't want to prolong it, but
13 there's a couple of things that I wanted to clarify in your
14 testimony from yesterday and today. Are you okay to answer a
15 few more questions?

16 A. Yes.

17 Q. I'm going to go back to the Navy for just a few minutes.
18 And I want you to go ahead and grab that list that's on the
19 table.

20 A. Yes.

21 Q. I want to ask you about one of the pieces of equipment
22 that you listed up here towards the top. Under Foster Wheeler
23 boilers, you've listed forced draft blowers. Do you see that
24 on your list?

25 A. Yes.

1 Q. And next to that you wrote Westinghouse with each
2 Westinghouse blower driven by a Westinghouse turbine. Did I
3 read that correctly?

4 A. Yes.

5 Q. And can you tell me where those blowers were located in
6 the forward fireroom of the *Mullinnix*?

7 A. They were like toward the top of the compartment, if you
8 will. They had these tubes or vents coming down where I was
9 checking water, and I sat underneath one of those all the time,
10 most of the times.

11 Q. So were there a set number of blowers for each Foster
12 Wheeler boiler?

13 A. Yes. There were probably two for each, the top, two at
14 the bottom.

15 Q. And your normal duty post was up there on the second
16 level; is that correct?

17 A. Yes, that's correct.

18 Q. Is that where the blowers were located?

19 A. Yes.

20 Q. How were those blowers driven, how were they powered?

21 A. They were turbine, by steam.

22 Q. And were those turbines, were they bare metal or was there
23 something -- or were they covered with something?

24 A. They were covered.

25 Q. And what were they covered with?

1 A. Asbestos.

2 Q. And during overhaul work, did you ever see those
3 Westinghouse turbines worked on?

4 A. Yes, by the yardbirds.

5 Q. And during the course of your work, did you ever have
6 to -- did they ever have to remove the asbestos in order to do
7 whatever work they were going to do on the turbines?

8 A. Yes.

9 Q. And did you see that done?

10 A. Yes.

11 Q. Moving on, I want to ask you if you can look at your list.
12 Go down under valves. The second valve listed is Crosby. Do
13 you see that?

14 A. Yes.

15 Q. And I know there were some questions asked to you about
16 Crosby and whether or not you remembered that name or
17 associated that name with pumps or valves on the *U.S.S.*
18 *Mullinnix*. According to your list, you have it under valves.
19 Does that refresh your recollection as to your recollection of
20 Crosby on the *Mullinnix*?

21 A. Yes.

22 Q. You were asked a number of questions by counsel for Foster
23 Wheeler. Do you recall that testimony?

24 A. Yes.

25 Q. Some of the work that you remembered doing was punching

1 tubes in the Foster Wheeler boiler, correct?

2 A. Correct.

3 Q. And you testified that you had to open up the steam drum.
4 Do you remember that testimony?

5 A. Yes, I do.

6 Q. Where is the steam drum located on a Foster Wheeler
7 boiler?

8 A. On the very top of the boiler.

9 Q. And is that steam drum insulated?

10 A. Yes, it is.

11 Q. What is it insulated with?

12 A. Asbestos.

13 Q. In order to do that work on the tubes, what, if anything,
14 did you have to do with the asbestos installation on the steam
15 drum?

16 A. We had to remove the cover off that steam drum cover, if
17 you will. There's a big large metal cover underneath it. The
18 asbestos covering. And we actually had to remove the door to
19 the drum.

20 Q. And when you finished that work, did you have to replace
21 the asbestos insulation?

22 A. Yes. The gasket for the metal door had to be replaced.

23 Q. Okay. And that's something different. So you had to --
24 did you have to remove the gasket to get into the drum?

25 A. You didn't have to remove it, but it was going to come off

1 anyway at some point.

2 Q. Okay. How big a gasket was that?

3 A. Well, if it was a 36-inch diameter, pretty big.

4 Q. Okay. And that was part of the Foster Wheeler boiler,
5 correct?

6 A. Correct.

7 Q. And you had to replace that gasket when you were closing
8 it up?

9 A. Yes, sir.

10 Q. And did you also have to replace the asbestos insulation
11 on the outside of the steam drum?

12 A. No, not always. Because a lot of times you could get it
13 off without a problem. Other times you had to like recement it
14 on.

15 Q. Okay. But either way, even if it wasn't damaged in taking
16 it off, you still had to put it back on afterwards, correct?

17 A. Correct.

18 Q. And you also talked about the overhaul work during the
19 first eight weeks on board. Do you remember some of that
20 testimony?

21 A. Yes, I do.

22 Q. And I know that you did that overhaul work on the boilers
23 during each of the subsequent overhauls, three in total; is
24 that right?

25 A. Correct.

1 Q. You talked about asbestos panels on the inside of the
2 Foster Wheeler boiler. Do you remember that testimony?

3 A. Yes.

4 Q. Can you describe what you saw and what you're describing
5 as an asbestos panel inside the Foster Wheeler boiler?

6 A. Well, inside they had these panels that were like two and
7 a half, three foot long by a couple and a half, two feet wide,
8 and maybe only a couple inches thick, and that panel was white,
9 so we knew it was asbestos.

10 Q. And is that -- are you describing asbestos block, the
11 insulation block inside the boiler?

12 A. Yes.

13 Q. And again, that is material that had broken down, it was
14 being taken out and you removed from the boiler, correct?

15 A. Correct. And when those -- there was quite a bit of stuff
16 that had to be removed and taken out and cleaned up, so the
17 yardbirds could get back in there and reinstall new material.

18 Q. And describe what conditions were like when you were
19 working on a job like that, removing from the Foster Wheeler
20 boiler?

21 A. Well, I mean, being inside the boiler like that, for me,
22 it was the very first time and it just seemed like it was so
23 long and closed and there was all this stuff that was piled up
24 in the middle of the floor that the yardbirds had taken off the
25 walls, and then to have to pull all that stuff out and get rid

1 of it in the dumpster on the pier --

2 Q. Was it a dusty process?

3 A. Very dusty, very, very.

4 Q. Did you breathe that dust?

5 A. Yes.

6 Q. Did Foster Wheeler provide you with any warning about the
7 dangers of breathing asbestos while you were on the *Mullinnix*?

8 A. No.

9 Q. Was there any warning about the dangers of asbestos on the
10 big plaque on the boiler that said Foster Wheeler that you
11 described earlier?

12 A. No, there was not.

13 Q. Was there room on that plaque to put a warning if Foster
14 Wheeler had chosen to do so?

15 A. I suppose they could have, yes.

16 Q. There was some confusion I think when you were asked
17 questions about the number of times you were inside the Foster
18 Wheeler boiler, and I wanted to ask you about that. You
19 testified, I know, that during the first eight-week overhaul
20 you estimated that you were inside three to five times. Do you
21 remember that testimony?

22 A. Yes, I do.

23 Q. And you were being asked a bunch of questions about the
24 eight-week overhaul. What I want to ask you is, after that
25 eight-week overhaul, during the subsequent overhauls, were you

1 also inside the Foster Wheeler boiler when you had to do that
2 same work?

3 A. Yes.

4 Q. And how often did that happen during those subsequent
5 overhauls?

6 A. I mean, again, it would be three, four, five times. It
7 just depended on how much -- I'm sorry -- it just depends on
8 how much had to be exposed for the yardbirds.

9 Q. Okay.

10 A. On the very last one, that was the major overhaul and
11 everything got done.

12 Q. Oh, you're right. And that brings up a good point. Just
13 bear with me for a minute. In your mind, that 19 -- that last
14 overhaul, the 1968 overhaul, you described it as a major
15 overhaul, correct?

16 A. Correct.

17 Q. Now, I know there have been a lot of questions sort of,
18 you know, asking you to estimate time and how long one thing
19 lasted and then the next thing. And I know that's hard to do.
20 But I want you to just bear with me. I'm looking for
21 something. Let me see if I can put my hands on it. Would you
22 dispute or would you have any reason to disagree with the fact
23 that that overhaul lasted from March of 1968 until September of
24 1968? Does that sound fair to you?

25 A. That's pretty fair, yes. There was not -- there was major

1 work being done.

2 Q. And, of course, there are records that tell us exactly
3 when the ship was there for dry dock, right?

4 A. Yes.

5 Q. Just bear with me. Did you ever see any warnings about
6 the dangers of asbestos on any other equipment in the forward
7 fireroom of the *U.S.S Mullinnix*.

8 A. No, sir.

9 Q. Did you ever see any warnings about the dangers of
10 asbestos on any of the pumps in the forward fireroom?

11 A. No, sir.

12 Q. Ever see any warning of the dangers of asbestos on the
13 valves in the forward fireroom?

14 A. No, sir.

15 Q. Ever see any warnings about the dangers of asbestos on the
16 turbine in the forward fireroom?

17 A. No, sir.

18 Q. Anywhere at all, on any of the equipment in the forward
19 fireroom, did you ever see any warnings about the dangers of
20 asbestos?

21 A. No, sir.

22 Q. Moving on to the yard work and lawnmower work, you
23 mentioned exhaust gaskets, as well as the other gaskets that we
24 talked about. I wanted to just follow up on that. Were there
25 certain mowers or certain engines where you also had to deal

1 with the exhaust gaskets in making repairs and tune-ups to
2 lawnmowers?

3 A. Yes.

4 Q. And do you recall which engines the exhaust work came into
5 play on?

6 A. Mostly Briggs & Stratton.

7 Q. And can you describe the exhaust gasket and what material
8 that was made of?

9 A. The exhaust gasket was a sandwich gasket.

10 Q. Okay. And do you believe that the exhaust gasket
11 contained asbestos?

12 A. Yes, and --

13 Q. Okay. Go ahead.

14 A. I was going to say that not all of them had that. Some of
15 them had a screw-in type muffler.

16 Q. Are you able to tell us which lawnmowers with Briggs &
17 Stratton engines had the asbestos exhaust gaskets that you
18 remember?

19 A. No.

20 Q. Are you able to tell us how frequently you encountered
21 that type of exhaust gasket?

22 A. Not very often.

23 Q. Are you able to tell us whether it happened more at Herman
24 Kinney's or more at Bob Merrow's?

25 A. Probably was more at Bob Merrow's because of the volume

1 that Bob Merrow did versus what Kinney did.

2 Q. Okay. And when you had to do the work on the exhaust
3 gaskets, was it the same process as you already described with
4 respect to the other sandwich gaskets?

5 A. Yes.

6 Q. Was there anything different about it that stands out to
7 you?

8 A. No.

9 Q. I'll try to be quick here. You just mentioned when
10 speaking with your attorney that you now recall Crosby was a
11 valve that you saw on the *Mullinnix*; is that right?

12 A. Yes.

13 Q. So you don't associate Crosby with pumps; is that right?

14 A. That's right.

15 Q. Did you see the Crosby name on any of the valves you
16 encountered in the *Mullinnix*?

17 A. Yes.

18 Q. Where was it?

19 A. On the body -- I'm sorry -- on the body of the valve
20 itself.

21 Q. Did it just have the name Crosby?

22 A. Yes.

23 Q. Anything else that you recall?

24 A. No.

25 Q. And all of the -- were all of the Crosby valves that you

1 encountered on the *Mullinnix* in the forward boiler room?

2 A. Yes.

3 Q. Were they all a part of the boiler in that room?

4 A. Yes.

5 Q. What was their function on the boilers?

6 A. I don't know.

7 Q. Did you ever personally work on, that is, repair,
8 maintain, move, do any hands-on work on a Crosby valve on the
9 *Mullinnix*?

10 A. No.

11 Q. Do you recall any others working specifically on a Crosby
12 valve in your presence while you were on the *Mullinnix*?

13 A. There could have been others working on them but, again,
14 that wasn't for me to do.

15 Q. Well, my question was whether you remember seeing anybody
16 else specifically -- work specifically on a Crosby valve while
17 you were on the ship?

18 A. I mean, all I can say is that there could have been. I
19 just don't know.

20 Q. Okay. So it would be accurate to say that others were
21 working on equipment on the ship while you were there?

22 A. Yes.

23 Q. Some of it could have been Crosby, but you don't recall
24 actually seeing them work on Crosby valves?

25 A. Not specifically, no.

1 Q. Do you know what a safety valve or a relief valve is?

2 A. Do I know what it is?

3 Q. Yes.

4 A. It has a function to relieve pressure.

5 Q. Do you know if the Crosby valves on the *Mullinnix* were
6 safety valves or relief valves?

7 A. I don't know.

8 Q. Can you describe the Crosby valve that you saw on the
9 *Mullinnix* in terms of color, shape, size?

10 A. There are so many valves in the boiler room on a boiler, I
11 can't be specific, no.

12 Q. Do you recall if they were insulated on the outside?

13 A. No.

14 Q. I assume you don't recall any series numbers or model
15 numbers or serial number?

16 A. No, not at all.

17 Q. I understand from your testimony that you identified
18 Westinghouse forced draft blowers and forced draft blower
19 turbines in the forward fireroom of the *Mullinnix*, correct?

20 A. Correct.

21 Q. I'm going to break it down for the forced draft blowers
22 and forced draft blower turbines separately. Okay? Did you
23 ever perform any work on the forced draft blowers themselves on
24 the *Mullinnix* in the forward fireroom?

25 A. No.

1 Q. Did you ever see anyone perform any work on just the
2 forced draft blowers themselves?

3 A. The yardbirds would do that work.

4 Q. Did you ever witness them specifically performing work on
5 a Westinghouse forced draft blower?

6 A. Yes.

7 Q. Do you know the nature of that work?

8 A. No.

9 Q. Can you describe what they were doing? They took --

10 MR. BRALY: Oh, sorry.

11 Q. Can you describe what they were doing?

12 A. They took all the housing and everything apart from it.

13 Q. Do you know why they were doing this work?

14 A. No, I don't know why.

15 Q. Okay. Do you know what tools they used?

16 A. I don't.

17 Q. Do you know the material composition of any of the
18 internal components of the forced draft blower?

19 A. Well, there was the metal casings and asbestos.

20 Q. Okay. And what is the basis for -- well, strike that.
21 What parts were asbestos?

22 A. The inner panels.

23 Q. And what made you believe that the inner panels of the
24 forced draft blowers were asbestos?

25 A. Talking with the yardbirds. They said it was asbestos and

1 had to be taken out and they'd put in new.

2 Q. Okay. Can you describe the dimensions of the forced draft
3 blowers?

4 A. Oh, gosh, not really.

5 Q. How about the color?

6 A. No.

7 Q. Shape, the general shape of the forced draft blowers?

8 A. All I know is they were pretty huge. They were up in the
9 top of the boiler room.

10 Q. Okay. And what was the purpose of forced draft blowers?

11 A. Well, they added ventilation to the different stations.
12 My duty was checking the water level on the boiler, and there
13 was a big vent right there that I basically sat under.

14 Q. Okay. And was that the removal of the outer casing that
15 you described on the forced draft blower, was that -- did you
16 only see that work done on one occasion?

17 A. Yeah, I didn't pay any attention to it at all. Probably,
18 yes.

19 Q. All right. Do you know what year this was?

20 A. I want to say '68.

21 Q. And how long did the work on the forced draft blower take?

22 A. I can't really answer that specifically because, I mean,
23 my watch was like every four hours. I mean, there could have
24 been just the yardbirds working on there when I wasn't even in
25 the boiler room.

1 Q. Okay.

2 A. I honestly don't know how long it took them.

3 Q. Okay. And with respect to just the forced draft blowers,
4 did you -- how far were you away from the yardbirds when they
5 performed this work?

6 A. Well, they were in the -- they were in the upper section
7 of the boiler room and I was on the second level.

8 Q. Okay. So can you estimate in feet how far that may have
9 been?

10 A. 15, 20.

11 Q. Okay. From 15, 20 feet away, you could see the type of
12 work that they were doing?

13 A. Not specifically.

14 Q. Okay. So the only work that you can state with respect to
15 the forced draft blowers is that they were removing the
16 outside?

17 A. Yes, sir.

18 Q. Okay. Do you know what the material composition of the
19 outside piece was?

20 A. I believe it was metal.

21 Q. Metal. Okay. And there was no insulation on the forced
22 draft blower, correct?

23 A. No.

24 Q. Okay. I'm going to move on to the turbines associated
25 with the forced draft blowers. Did you perform any work on the

1 turbines associated --

2 A. No.

3 Q. -- with the forced draft blowers?

4 A. No.

5 Q. Did you see -- I'm sorry.

6 A. I said no.

7 Q. Okay. Did you ever see any, ever see anyone else perform
8 work on those turbines?

9 A. The yardbirds probably did. I can't be specific.

10 Q. So if I understand your testimony, you don't have a
11 specific recollection of seeing a yardbird work on a
12 Westinghouse turbine associated with a forced draft blower,
13 correct?

14 A. They could have been working on it. I just didn't know
15 it.

16 Q. Okay. And what was the size of the turbine?

17 A. I can't answer that.

18 Q. Can you describe just how it looked or the shape?

19 A. No.

20 Q. Was the turbine insulated?

21 A. Yes.

22 Q. Can you describe the insulation?

23 A. Well, it appeared to be an asbestos covering.

24 Q. Okay. And what made you believe it was an asbestos
25 covering?

1 A. Because the covering looked like everything like all the
2 rest of the ship in the forward fireroom that was covered with
3 the stuff and painted.

4 Q. Okay. So would it be accurate to describe it similar to
5 the insulation pads that the Navy put on things?

6 A. Yes.

7 Q. Okay. Do you know how long the insulation had been on
8 Westinghouse forced draft blower turbines?

9 A. I do not know that.

10 Q. And how many times did you see any work on Westinghouse
11 forced draft turbines by yardbirds?

12 A. Probably just that one, that one time, but it took a few
13 days. It didn't happen in one day.

14 Q. All right. Do you know the process -- can you describe
15 the process of their work that they performed on the turbine?

16 A. No. No, because they had their thing to do and we had
17 ours and we tried not to interfere with each other.

18 Q. Okay.

19 A. I mean, you're lucky if they even talked to you.

20 Q. Okay. So would it be fair to say that generally you would
21 be in the vicinity of, but as you had your own duties and
22 responsibilities, you wouldn't be paying attention necessarily
23 to everything they were doing?

24 A. That's correct.

25 Q. All right. Now, you have no information that the work

1 that they performed on any of the Westinghouse forced draft
2 blower turbines had any asbestos gaskets in it, correct?

3 A. Can you repeat the question.

4 Q. Sure. You don't have -- you don't know if any of the work
5 that the yardbirds may have performed on the turbines, the
6 Westinghouse turbines involved any work with asbestos gaskets,
7 correct?

8 A. Not to my knowledge, I don't. I don't know.

9 Q. Okay. And during the time period that you saw work on the
10 Westinghouse forced draft blower, or the associated turbine,
11 what was your rating?

12 A. Third class boilerman.

13 Q. And would it be fair to say that the forced draft blowers
14 or the associated turbines, you don't know their maintenance
15 history, correct?

16 A. Correct.

17 Q. And any insulation that was -- that may have been on the
18 turbines, you don't know who supplied that, correct?

19 A. Correct.

20 MR. BRALY: Aaron, hold on a second.

21 Your Honor, there is a natural break in this.

22 THE COURT: Perfect. I was just going to ask.

23 Fifteen-minute break.

24 COURTROOM CLERK: All rise for the jury.

25 (Jury exits the courtroom.)

1 (Recess, 11:14 a.m. - 11:32 a.m.)

2 THE CLERK: All rise for the jury.

3 (Jury entered the courtroom.)

4 THE CLERK: Court is back this session, please be
5 seated.

6 Q. Hello. When Attorney Duffy was asking you some questions,
7 additional questions about gaskets on Briggs & Stratton
8 engines, that's just what I wanted to quickly follow up on.

9 A. Yes.

10 Q. You told Attorney Duffy that there was a sandwich gasket
11 that could be found on Briggs & Stratton. Is it exhaust or is
12 it manifold?

13 A. The exhausts.

14 Q. Okay. Now, you testified that you did not encounter them
15 very often, but could you be any more specific, in an average
16 week, say, for Mr. Kinney how often would you encounter these
17 gaskets?

18 A. I wouldn't dare guess.

19 Q. Could it have been -- and again, I'm not trying to put
20 words in your mouth -- could it have been less frequently than
21 once a month?

22 A. I would say two to four times a week.

23 Q. In a week. And how about the same question for when you
24 were working at Merrow's?

25 A. Merrow's, it would have been higher because of the volume

1 that they did.

2 Q. Can you estimate how much more or just that it would be
3 more?

4 A. It would be more.

5 Q. Okay. And, like, I asked you for the other type of
6 sandwich gaskets, can you estimate what percentage of the time
7 they would get stuck on versus release freely?

8 A. Are we talking on that exhaust?

9 Q. Specific to the sandwich exhaust gaskets on the Briggs &
10 Stratton engines, yes.

11 A. They would stick on as often as the head gasket would
12 because it was much lower.

13 Q. And then the last question: What was the approximate
14 size? And by that I mean the diameter of these sandwich
15 gaskets.

16 A. On the exhausts?

17 Q. Yes.

18 A. Probably about the size of a silver dollar --

19 Q. Okay.

20 A. -- or a little bit smaller, maybe.

21 Q. Okay. So approximately in the range of an inch in
22 diameter?

23 A. Oh, yeah, yeah.

24 Q. And it outlines your medical care providers and then your
25 employers. So I want to talk a little bit about your current

1 health condition and your medical providers, if I can reorient
2 you that way.

3 When you moved to North Carolina, did you begin --
4 strike that -- was your primary care physician affiliated with
5 the VA facility that you had been treating with recently?

6 A. No.

7 Q. When did you first have any healthcare provided to you
8 through the VA?

9 A. I applied for it in 2003.

10 Q. And when you lived in Massachusetts, did you have any
11 medical care provided to you through the VA?

12 A. No.

13 Q. And I have from Mr. Duffy, and I'm sorry if I pronounce
14 the name wrong, how do you pronounce the name of your primary
15 care physician?

16 A. Dr. Paniagua.

17 Q. Paniagua. Okay, thank you.

18 And how long has Dr. Paniagua been your primary care
19 physician.

20 A. Oh, gosh, quite a few years now.

21 Q. Okay. More than ten?

22 A. Probably not more than ten.

23 Q. Do you recall the name of your primary care physician
24 before Dr. Paniagua?

25 A. There were several before her. There was Dr. Murphy and

1 then there was Dennis Redfern.

2 Q. And where was Dr. Murphy located?

3 A. He was in Salisbury at the VA for a short time.

4 Q. Okay. And then Dr. Redfern?

5 A. Dennis Redfern was the first one I ever saw when I started
6 going there, and he ended up retiring.

7 Q. So that takes us back to when you started receiving care
8 at the VA; is that accurate?

9 A. Yes.

10 Q. And do you recall who your primary care physician was
11 before you started having a primary care physician at the VA?

12 A. No, it was just Dennis Redfern and Dr. Murphy, and that
13 was it.

14 Q. Okay.

15 A. There was one more, one more in there, but I can't
16 pronounce his name. I don't remember it. He probably lasted
17 for about a month.

18 Q. Okay. We referenced it yesterday, Mr. Cook, and it's the
19 list of your medications and surgeries. On the front page it
20 looks like a 2, updated it says 2/2020, it was crossed out, and
21 then said 12/2021.

22 And then it lists typewritten a number of surgeries
23 and medications and then some handwriting.

24 A. Yes.

25 Q. Are you familiar with that document?

1 A. Yes.

2 Q. Do you have it with you?

3 A. I do.

4 Q. Can you take it out?

5 A. I am. I follow orders quite well.

6 Q. Let me know when you're all set.

7 A. All right. I have it in my hand.

8 Q. Okay. Is any of the handwriting on what we marked as
9 Exhibit 7 yours?

10 A. Yes.

11 Q. Okay. Is all of the handwriting on Exhibit 7 yours?

12 A. Yes.

13 Q. Did you type this up? Because you said your wife helped
14 you with this. Did you type this up, or did your wife type it
15 up?

16 A. My wife did it on a computer.

17 Q. Okay. And it looks like you started -- is this the first
18 time you did such a document in February of 2020?

19 A. Yes.

20 Q. Okay. And one of the entries I'd like to ask you about is
21 the throat/uvula surgery that you had in the 1990s. Where did
22 you have that surgery?

23 A. At Davis Hospital in Statesville.

24 Q. And what was that surgery for?

25 A. Well, I snored a lot, and my wife couldn't take it, so we

1 sought out this doctor and he said I can take care of that for
2 you. But then, guess what?

3 Q. It didn't work?

4 A. It didn't work.

5 Q. And then it looks like in 2001, it says heart attack and
6 four stents.

7 A. Yes.

8 Q. You had heart surgery in March of 2001; is that correct?

9 A. They did a heart cath in 2001 to determine how blocked up
10 I was, and they decided they could not do open heart surgery,
11 but they could do the stents instead.

12 Q. And did that surgery take place in March of 2001?

13 A. Yes.

14 Q. And where did you have that surgery?

15 A. Baptist Hospital in Winston-Salem, North Carolina.

16 Q. And is that facility affiliated at all with the VA?

17 A. The VA might use them at times, but other than that, I
18 don't know.

19 Q. Okay. And it says that you had a heart attack. Is that
20 the first time that you had a heart attack?

21 A. Yes.

22 Q. And then it looks like you had stents again in November of
23 2004 and April of 2007; is that correct?

24 A. That's correct. I have a total of six stents now.

25 Q. Okay. And where did you have the surgery, the stent

1 surgery in 2004?

2 A. At Baptist Hospital in Winston-Salem.

3 Q. And what about the one in April of 2007?

4 A. Same place.

5 Q. And is that the last time you had stent surgery, in 2007?

6 A. Yes.

7 Q. Have you had any other surgeries related to your heart
8 since 2007?

9 A. No. They've done several heart caths just to make sure
10 I'm doing okay and nothing's clogging up, because there were
11 signs of some areas that were getting clogged up a bit, but
12 they thought they might stop, if you will.

13 Q. Okay. And I see on this list, there's two entries for
14 heart caths, and one says "heart cath Asheville" in 2012 and
15 then again in 2016. What's the name of the facility in
16 Asheville?

17 A. It's the VA Hospital in Asheville.

18 Q. Do you know the name of that VA?

19 A. Not right off the top of my head, no.

20 Q. Do you know if there's more than one VA facility in
21 Asheville?

22 A. No, there's only one.

23 Q. And that's Asheville, North Carolina, right?

24 A. Yes.

25 Q. And then the one above it, "heart caths," it says

1 Kernersville, one in September 2017 and one in February of
2 2019. And what's the name of the facility in Kernersville
3 where you had that procedure?

4 A. That is also a VA facility.

5 Q. That's in North Carolina, right?

6 A. Correct.

7 Q. Okay.

8 A. Yes.

9 Q. So the most recent heart catheter procedure that you had
10 was in 2019?

11 A. Yes.

12 Q. And do you recall what the findings were from that?

13 A. I didn't have to have any more stents.

14 Q. Okay, congratulations.

15 A. Thank you.

16 Q. And is there a doctor or a facility at which you follow
17 for your heart since 2019?

18 A. Yeah, I do it at the Salisbury VA, and my cardiologist
19 doctor there is Dr. Hodgkiss.

20 Q. Okay. And you have on here that two times in 2017 you had
21 ear surgeries for cancer. What kind of cancer?

22 A. Well, it was on this ear right here, and it was -- all I
23 know is they said it was cancerous and had to come out.

24 Q. Was it a type of skin cancer?

25 A. Yes.

1 Q. And where did you have those procedures?

2 A. In the Salisbury VA.

3 Q. At the VA?

4 A. Yes.

5 Q. Okay. And then in handwriting we have a biopsy in
6 January, January 11 of 2021, and then cancer surgery on May 20,
7 2021. Are those both related to your mesothelioma?

8 A. Yes.

9 Q. And where did you have the biopsy?

10 A. The biopsy was done in Salisbury, North Carolina.

11 Q. And where was the cancer surgery?

12 A. Cancer surgery was at the Duke University Hospital in
13 Durham, North Carolina.

14 Q. And do they do surgeries at Duke in conjunction with the
15 VA?

16 A. Yes.

17 Q. And --

18 A. They had --

19 Q. Go ahead.

20 A. I had Community Care to be able to go there.

21 Q. And that's through the Veterans Administration, right?

22 A. Yes, because I requested a second opinion.

23 Q. And was the second opinion at Duke?

24 A. Yes.

25 Q. And that's where you had your surgery?

1 A. Yes.

2 Q. And who is your current oncologist?

3 A. Well, right now I'm on Community Care here in Statesville,
4 North Carolina.

5 Q. Okay.

6 A. And Dr. Sholar is the oncologist, and she's out of Baptist
7 as well, but she also takes Community Care from the veterans.
8 So that's who I'm working with right now. But in Salisbury, I
9 also have one there whose name is Dr. Williams.

10 Q. And is there one doctor that is sort of overseeing all of
11 your care?

12 A. It's -- pretty much right now it's Dr. Sholar, but she's
13 working with others, like Dr. Williams in Salisbury, and also
14 working with Dr. Harpole and another doctor, Dr. Clarke at
15 Durham.

16 Q. Okay, so --

17 A. But they're all --

18 Q. They're your team?

19 A. Yes.

20 Q. Okay. Anyone else that you have seen or treated with for
21 your mesothelioma?

22 A. No.

23 Q. Okay. And the medications that are listed on here that
24 we've marked as Exhibit 7, is that a list of current
25 medications?

1 A. Yes, but at the very bottom it shows lubricating ointment
2 both eyes.

3 Q. Yes.

4 A. That one's been discontinued very recently. We need to
5 cross that out.

6 Q. And I see it says -- Spiriva is crossed out?

7 A. Yes.

8 Q. And it looks as of 8/17?

9 A. Yes.

10 Q. So that was August 17 or August of 2017, that was
11 discontinued?

12 A. August 17th.

13 Q. Of 2021?

14 A. Yes, I'll put that in there.

15 Q. That's okay. And all of the rest would be your current
16 medications, right?

17 A. Yes.

18 Q. And are there any of medications that you take currently
19 that are not on this sheet?

20 A. No. We came up with this list mainly because of in case
21 of emergencies. You know how they always ask you those
22 questions? Now we can just hand them this.

23 Q. That's a good system, actually.

24 A. It is. My wife has a list as well, and it's been helpful,
25 because she was in the hospital earlier this year and I was

1 just able to hand it.

2 Q. Mr. Cook, is there any history of cancer in your family?

3 A. Yes.

4 Q. And what members have had cancer?

5 A. My oldest brother has lymphoma. And another brother, his
6 son died of cancer, but we have no knowledge or any proof that
7 it was true. My brother, that brother particularly, didn't go
8 to the doctor no matter what. So if he knew he had it, he
9 wasn't telling anybody, and he just died with it. We really
10 don't know.

11 Q. Any other -- strike that.

12 Your oldest brother that had lymphoma, what's his
13 name?

14 A. William.

15 Q. And how much older than you is he?

16 A. Ten years.

17 Q. Any of your other siblings, or if you had any other
18 siblings, any of them have cancer?

19 A. No.

20 Q. Did either of your parents have cancer?

21 A. No.

22 Q. What was your father's cause of death?

23 A. Well, we were told at the time that he had -- that he was
24 strangulated by a hiatal hernia. We've had doctors tell us
25 that's impossible.

1 Q. Okay.

2 A. So there's no way --

3 Q. When did he die?

4 A. When?

5 Q. Yes.

6 A. Oh, gosh, ten years ago or so. It could have been more.
7 I can get it out of the book.

8 Q. That's okay. Just your best memory today is fine.

9 What was your mother's cause of death?

10 A. My mother's cause of death was a broken heart.

11 Q. And when did she pass away?

12 A. Probably eight years ago, but she went through hell, if
13 you will. She had amputees from her toes, foot, up to her
14 knee.

15 Q. Did either of your parents have any heart conditions?

16 A. Not that I know of.

17 Q. Did you ever smoke, Mr. Cook?

18 A. I did.

19 Q. And what years did you smoke?

20 A. Oh, gosh, from '64 to about '90.

21 Q. Did you always smoke the same brand of cigarettes?

22 A. Well, I kind of bounced around a bit.

23 Q. And what brands of cigarettes did you smoke?

24 A. Mostly Marlboro's, and there was also a time when I was
25 smoking Domino's only because they were cheap.

1 Q. And approximately how many cigarettes did you smoke a day?

2 A. Probably a pack a day.

3 Q. And did you quit in 1990?

4 A. Yes, thereabouts.

5 Q. And you were still smoking cigarettes when the warnings
6 came out on cigarette cartons?

7 A. Yes, yes.

8 Q. Why did you quit in 1990?

9 A. Well, I tried several times to quit, and I was really
10 addicted to it, you know, and finally the family kept saying,
11 you gotta quit, you gotta quit, so I gave it my best and I
12 quit.

13 Q. And so 1990 was the charm?

14 A. Yes. I tried several times before that.

15 Q. Now, you told us yesterday that you retired in 2009, and
16 that was the end of your employment; is that accurate?

17 A. Yes, they no longer needed me.

18 Q. Did you do any -- after 2009, did you do any other types
19 of work for pay like you had done in Massachusetts in terms of
20 the lawn mower work?

21 A. No, I did not.

22 Q. When you retired in 2009, did you receive a pension?

23 A. Well, it wasn't a pension; I got a severance pay.

24 Q. That was a lump sum payment?

25 A. Yes.

1 Q. Do you remember how much that was?

2 A. It was 50 some-odd thousand dollars, but the sad part of
3 that was, when I went to collect, you know, Social Security for
4 unemployment, I found out that we had to use all that up first
5 before I could collect a penny.

6 Q. And you said two different things. So how old were you in
7 2009?

8 A. Sixty-two.

9 Q. And so you filed an unemployment claim?

10 A. Yes.

11 Q. And you left -- it was Amesbury at the time, right?

12 A. Correct.

13 Q. AmesburyTruth?

14 A. Yes.

15 Q. But they said you had to use up the \$50,000 before you
16 could qualify for funds under unemployment?

17 A. Yes.

18 Q. Okay. And then at some point did you begin receiving
19 Social Security payments?

20 A. Yes.

21 Q. And how old were you when you started receiving Social
22 Security payments?

23 A. God, my wife's not here and I don't have access --

24 Q. If you don't remember, that's fine.

25 A. I don't remember.

1 Q. And you still receive Social Security, correct?

2 A. Yes, so I know I received it early.

3 Q. Okay. Do you know how much per month you receive from
4 Social Security?

5 A. Right off the top, no.

6 Q. Okay.

7 A. My wife has all that stuff, and she's the brains of the
8 outfit, if you will.

9 Q. Mr. Cook, have you made any claims to the VA as a result
10 of your mesothelioma?

11 A. Not really.

12 Q. Do you know whether you filed any VA disability claim?

13 A. No.

14 Q. Do you have any type of pension from the VA?

15 A. I do.

16 Q. And how much a month do you receive from the VA?

17 A. 3,600.

18 Q. And when did you start receiving your VA pension?

19 A. Well, that goes back a few years, because originally they
20 were only allowing me a 10 percent disability for my heart, and
21 that went on for several years. And finally, my heart doctor
22 was able to establish that my numbers were such that I needed
23 to be at a hundred percent. And, again, I didn't have that
24 information in front of me.

25 Q. That's okay. And so at some point that increased from a

1 10 percent disability to a hundred percent disability and the
2 medical basis was the condition of your heart?

3 A. Yes.

4 Q. Okay.

5 A. Now, to back up a little bit, it was really only like
6 3,300 at the time, and since I've had this cancer, they've
7 added another 300-something dollars to it. Why, I don't know.

8 Q. So you got an increase in your monthly payment to 3,600,
9 and so now there's the heart condition and the cancer that
10 factors into that; is that correct?

11 A. Yes, correct.

12 Q. To the best of your understanding, right?

13 A. Yes.

14 Q. Okay. Other than your Social Security and your VA
15 payment, do you have any other current sources of income?

16 A. I have some money from a 401(k) that I had while I was
17 working and we were putting money into it every pay period.

18 Q. And did Mrs. Cook work outside the home?

19 A. She did, but not very much.

20 Q. Does she receive Social Security?

21 A. Yes.

22 Q. Do you know what her Social Security benefit is?

23 A. I don't.

24 Q. Does she have any other income currently?

25 A. No.

1 Q. Did you ever file any type of workers' compensation claim?

2 A. No.

3 Q. Have you ever been diagnosed with any other lung
4 condition?

5 A. No.

6 Q. Do you recall if anyone ever told you you had pleural
7 plaques?

8 A. There was suspicion of it back in 2016. They saw
9 something on one of the x-rays that was suspicious is what they
10 said.

11 Q. And did you have follow-up x-rays on a periodic basis for
12 that?

13 A. Usually it was every year.

14 Q. And was that at the VA?

15 A. Yes, and the same information would show up.

16 Q. And when did you first start experiencing symptoms from
17 your mesothelioma?

18 A. Oh, gosh, last fall it started.

19 Q. I just want the record to be clear, that's the fall of
20 2020?

21 A. Yes.

22 Q. And I actually want to back up for one minute, because you
23 had mentioned that at the time you visited the *Mullinnix*, your
24 two daughters came with you. You have two children?

25 A. My two daughters and my wife came with me to visit the

1 *Mullinnix.*

2 Q. What are your daughters' names?

3 A. Laurie Ann and Tina Marie.

4 Q. And what's Laurie Ann's last name?

5 A. Well, she's deceased.

6 Q. I'm sorry to hear that. When did she pass away?

7 A. Six years ago, but she was married to a Williams.

8 Q. Did Laurie Ann have any children?

9 A. Not of her own.

10 Q. And I'm sorry, your other daughter's name?

11 A. Tina Marie. We're estranged from her. She's up in New
12 Hampshire somewhere. That's all we know about her. She's been
13 a difficult child since she was 14 years old, and she continues
14 at 50 to be difficult. Needless to say, we don't really have
15 anything to do with her.

16 Q. Do you know whether or not she has any children?

17 A. She has no children -- oh, sorry, she does, I'm sorry.

18 Q. That's okay.

19 A. Two, and they live here in Statesville.

20 Q. And what are their names?

21 A. Jessica Ashley and Logan Benjamin.

22 Q. How old is Jessica?

23 A. Twenty.

24 Q. And how old is Logan?

25 A. Sixteen.

1 Q. Do they live with you?

2 A. No, they live with their father.

3 Q. And what's their father's name?

4 A. Jeffrey Lambert.

5 Q. And do you see your grandchildren?

6 A. Yes.

7 Q. How often do you see them?

8 A. Well, when COVID was here, we didn't see them very much
9 because they weren't vaccinated and where I live -- and where I
10 have what I have I have to be careful to not catch anything
11 doing this chemo stuff, not even a cold. You know, the
12 slightest thing can throw everything off. So sometimes they
13 would come and through the glass door they would do hearts.

14 Q. And --

15 A. But that's it, and they've all been vaccinated and
16 boosted.

17 Q. Oh, good. So do you get to see them now?

18 A. We get to see them. We had Thanksgiving with them, the
19 Saturday after Thanksgiving, and that was nice.

20 Q. Before COVID were you able to see them on a regular basis?

21 A. Oh, yes. In fact, if you go back to 2009, that was
22 basically our job, was to take care of the kids, and we'd
23 rotate with the other grandparents every other week. So we all
24 had duties.

25 Q. You all had your assignments?

1 A. That was work enough.

2 Q. I'm sure. And the home that you live in, you own that
3 home, correct?

4 A. Correct.

5 Q. Is there a mortgage on the house?

6 A. No.

7 Q. Do you own any other property or houses?

8 A. No.

9 Q. All right. So sorry for that little sideways trip.

10 So you said you started having symptoms in the fall of
11 2020, correct?

12 A. Correct.

13 Q. And what were those symptoms?

14 A. Well, I was getting somewhat short of breath and had to
15 have some oxygen. And then they ran some scans, and during one
16 of the scans the person who read it said they needed to
17 investigate it further, and that's when they recommended the
18 biopsy.

19 Q. And that was a biopsy that was done at the VA?

20 A. Yes, in Salisbury.

21 Q. Okay. And it was after that that you got the second
22 opinion at Duke?

23 A. Yes, but during the time that they did the biopsy, they
24 had the lab at Salisbury VA check it out, and they weren't a
25 hundred percent sure, so they sent it to a lab in Silver

1 Springs, Maryland to be further examined, and that's when they
2 said it was definitely mesothelioma.

3 Q. Okay. And between that time, when you got the results
4 back from the lab in Maryland, and when you went to get the
5 second opinion at Duke, did you have any treatment or surgeries
6 of any kind?

7 A. No.

8 Q. Okay.

9 A. Just that biopsy that was done.

10 Q. And when you went to Duke, did they do their own biopsy or
11 did they look at the material that had already been taken?

12 A. They looked at the materials that had already been taken.

13 Q. And what was the opinion that you received from the
14 doctors at Duke?

15 A. That's what I had and that I needed the surgery, and there
16 were a couple of options. One option was that they thought
17 they should go in there and take care of what needed to be done
18 in a couple or three hours, but it ended up being like seven
19 hours because of the issues.

20 Q. Okay.

21 A. And --

22 Q. I'm sorry. Can I stop you for a moment? Because I don't
23 want to get too far ahead of ourselves.

24 So it was decided that you were going to have surgery.

25 A. Yes.

1 Q. And did you have any chemotherapy before you had surgery?

2 A. No.

3 Q. And you had surgery at Duke, correct?

4 A. At Duke, but it took a while to get in because of the
5 COVID and how far backed up they were.

6 Q. Yeah.

7 A. I went to Duke, I believe it was in February, and the
8 surgery didn't happen until May.

9 Q. In between February of 2021 and when you went to Duke, and
10 when you went to have the surgery in May, did you have any
11 treatment of any kind in that stretch?

12 A. No.

13 Q. How did the doctors explain the surgery that you were
14 going to be having in May?

15 A. Well, they thought they had to go in and based on the scan
16 that they, the PET scan, and they showed me a picture of it,
17 and they were just going to try to cut away what was
18 highlighted, but when they got in there, they found it was a
19 lot more involved than what they thought.

20 Q. And so the surgery turned out to be more extensive than
21 they thought it was going to be when they went in?

22 A. Very much so.

23 Q. And you said it turned out to be a seven-hour surgery?

24 A. That's correct.

25 Q. How long were you in the hospital after that surgery?

1 A. A week.

2 Q. And did you spend some of the time in the intensive care?

3 A. Most of that time was in intensive care.

4 Q. When you were discharged from the hospital, did you go to
5 a rehab facility or did you go home?

6 A. I went home. My wife was scared to death.

7 Q. And while you were in the hospital, what did the doctors
8 tell you about the results of the surgery?

9 A. Well, they told me, when they got in there, they found
10 that there was a huge tumor, which somehow didn't show up on
11 the PET scan. It was -- I believe it was because it was behind
12 the lung, if you will. And they said it was a four-and-a-half-
13 pound tumor, so they had to rebuild my diagram, do something
14 with the sac around my heart, cut away call the pleura around
15 the lung, and do patchwork around the lung, and that's why it
16 took so much longer in time.

17 Q. And which lung, right or left?

18 A. Right.

19 Q. And then you came home. And did you have an outpatient
20 care at home, VA -- sorry -- visiting nurse, that type of
21 thing?

22 A. No.

23 Q. Did you have to do any type of rehab or therapy at home
24 through this process?

25 A. No.

1 Q. Was there a period of time when you were confined to your
2 bed at home?

3 A. Not really, because I forced myself to get up every day.

4 Q. Good for you.

5 Now, I know that you wear oxygen pretty much 24 hours a
6 day. When did that start?

7 A. That's been most recent. I mean, since the surgery, it
8 even seems to be worse. And I was told that in four weeks'
9 time I wouldn't even need the oxygen, but that hasn't been the
10 case.

11 Q. Okay. So now --

12 A. In fact, I'm waiting --

13 Q. Go ahead.

14 A. In fact, I'm waiting now for a pulmonary through Community
15 Care that I can go and see, because I want a second opinion on
16 this one as well, because I didn't get care for the -- I didn't
17 care for the opinion I got from the pulmonary doctor from the
18 VA in Salisbury.

19 Q. And what opinion -- what was the opinion the pulmonary
20 doctor gave you?

21 A. He didn't even look at me. He looked at away and he said,
22 This is the way it's going to be. He said, This is how it is.
23 He says, There's nothing more we can do. And I'm like, I never
24 saw this man before, it was my very first visit, and I wasn't
25 happy.

1 Q. So you're going to see somebody else and get another
2 opinion?

3 A. I hope so. I'm going to be calling them tomorrow because
4 I didn't want to do anything that would interfere with this
5 week.

6 Q. My understanding is you told us yesterday you had five
7 treatments of chemotherapy and you're going to have your sixth
8 next week, right?

9 A. Yes, on the 14th.

10 Q. Can you describe for me the side effects that you had from
11 the chemotherapy?

12 A. Oh, the tiredness. It's horrendous. I talked to the
13 oncologist about it and she said it's going to get worse with
14 each one so -- and I've been experiencing it worse with each
15 one. I mean, sometimes I'll get up out of bed, sit, have
16 breakfast with my wife and sit and have a coffee or whatever.
17 Four or five hours, I'm ready to go back to bed, and I go back
18 to bed. And yeah, it's been rough. And the tiredness, the
19 loss of appetite. I mean, I've lost 40 pounds throughout this
20 thing.

21 Q. And, Mr. Cook, I'm sorry that I didn't get a chance to
22 meet you in person, but you and I have been sitting down over
23 Zoom. So can you tell me how tall you are?

24 A. 5'8".

25 Q. And how much did you weigh before you were diagnosed with

1 mesothelioma?

2 A. Well, before that -- I mean, it goes back probably a
3 year -- I was 205.

4 Q. And other than the tiredness, have you had any other side
5 effects from the chemo?

6 A. Oh, yeah. I'm nauseous part of the time. You have pills
7 for that. And it's just been rough.

8 Q. And I understand from our -- a little bit from our
9 conversation yesterday that after your sixth chemo, you'll have
10 another set of scans and meet with your team again; is that
11 correct?

12 A. Well, I'm supposed to go back to Duke on the 14th of
13 January, and I'm sure they're going to want to do more scans.
14 And they will have already conferred with Dr. Sholar, I'm sure,
15 and I'm sure they're going to have a game plan, but I'm not
16 sure what that game plan is.

17 All I do know is they originally wanted me to have
18 four chemos, but then because of the date of the appointment at
19 Duke, they wanted to make sure that I still had the chemo in my
20 system when I go to Duke.

21 Q. So that's why you ended up with two more chemotherapy
22 treatments?

23 A. Two more, correct.

24 Q. Okay. Mr. Cook, can you tell me what are some of the
25 things that you were able to do before you were diagnosed with

1 mesothelioma that you cannot do now?

2 A. Oh, gosh, I could mow the lawn, I could walk down the
3 street. I mean, lots of things. I mean, just going out with
4 my wife and -- you know, before COVID I'm talking, we would go
5 out. But during COVID, we've been housebound pretty much
6 because we were so fearful of catching stuff that's going to
7 put me behind where I should be.

8 But now, I mean, it's a struggle. It's a struggle to
9 get up off this chair and go to the bathroom. And if I get up
10 off this chair and my oxygen level says 92 and I carry the
11 oxygen with me to the bathroom, by the time I get back here it
12 would be down to 65. I mean, it drops that quick, even with
13 the oxygen on. So something's gotta get done.

14 Q. Well, I hope something does get done for your sake.

15 You talked a lot about the care that you've gotten at
16 the VA. Do you know if you've had any out-of-pocket expenses
17 related to your treatment, surgery, care to date?

18 MR. BRALY: We already have the stipulation on that,
19 so let's just go to 41, line 2.

20 Q. And have you had to pay people to do things around the
21 house that you used to be able to do that now you can't, for
22 example, mow the lawn?

23 A. Yes, such as mowing the lawn, yes.

24 Q. And, Mr. Cook, have you spoke with any of your doctors
25 about your prognosis?

1 A. No, because we're not sure what that is yet. Now --

2 Q. And you're meeting in January?

3 A. Yes. What -- the oncologist in Salisbury, he's hoping I
4 can get on immunotherapy, but we don't know.

5 MR. CHAPMAN: That completes the testimony of
6 Mr. Cook.

7 (Pause.)

8 MR. BRALY: Your Honor, at this time the plaintiffs
9 call Linda Cook.

10 THE COURT: While Mrs. Cook is coming up to the stand,
11 if you guys want to stand up and move around a little bit, you
12 can do that.

13 Mrs. Cook, I'm sure you've heard me on this, but the
14 microphone moves backwards and forwards and up and down.

15 THE CLERK: Are you all set?

16 MR. BRALY: Yes, I am.

17 THE CLERK: Can you please raise your right hand.

18 LINDA COOK, having been duly sworn by the Clerk, was
19 examined and testified as follows:

20 THE CLERK: Thank you.

21 MR. BRALY: Are we broadcasting on all monitors?

22 THE CLERK: This is a demonstrative?

23 MR. BRALY: Yes, this has all been shown to defense,
24 too.

25 DIRECT EXAMINATION

1 BY MR. BRALY:

2 Q. Hi.

3 A. Hi.

4 Q. You've been here with us in this trial for the last couple
5 of weeks, and this is kind of your first opportunity to
6 introduce yourself to the jury, so why you don't you go ahead
7 and tell them who you are.

8 A. My name is Linda Cook, and my husband was Roland Cook.

9 Q. You live in Statesville, North Carolina.

10 A. I do.

11 Q. And you came up here to be with us.

12 A. Yes.

13 Q. All right. How are you feeling?

14 A. Nervous.

15 Q. I can imagine. I kind of am, too, but we'll get through
16 this together, okay?

17 A. Okay.

18 Q. I want to talk to you about your husband, and then I want
19 to talk to you about the two of you.

20 A. Okay.

21 Q. Can you tell us who this guy is right here?

22 A. That is my husband, Roland.

23 Q. This is obviously back when he was in the Navy.

24 A. Mm-hmm.

25 Q. When you met him, just tell us about how you met him.

1 What happened?

2 A. Well, I was actually dating his cousin Percy, and Percy
3 decided to invite him along on one of our dates, and we went to
4 Pine Speedway, to the racetrack, and Roland and I got a look at
5 each other and that was it.

6 Q. No more Percy?

7 A. No more Percy.

8 Q. That was Roland's cousin, though?

9 A. Roland's cousin.

10 Q. So how did that make Thanksgiving, because that's got to
11 be a little bit awkward.

12 A. I don't think that they actually -- Roland might have been
13 gone by that time, so, you know --

14 Q. When did this happen? When did you meet Roland?

15 A. In 1965.

16 Q. Okay. So this is right before he shipped out.

17 A. Yes.

18 Q. And then he headed away to Vietnam?

19 A. Actually, we had a chance to date from September-ish of
20 '65, and then in June of '66 I graduated from high school, and
21 he had a chance to attend my baccalaureate, but he was shipping
22 out before the graduation.

23 Q. Okay. You guys were just kids, weren't you?

24 A. We were kids, yes, indeed.

25 Q. Tell us about your relationship when he was in Vietnam.

1 Was that hard being so far way?

2 A. It was very hard. We were writing frequently, and my
3 family, after a couple of months, didn't like the fact that I
4 was staying in the house so much and not doing anything, so I
5 was being pushed in a number of directions to date, and so I
6 did let Roland know, sadly, that I would be dating other
7 people, and he didn't like that.

8 Q. No, I can imagine.

9 A. Because he was perfectly willing to just, you know, wait.
10 But because I was trying to do what my family wanted me to, I
11 dated quite a few people.

12 Q. Any of them measure up to Roland?

13 A. Well, let's just say during that time I found that Roland
14 was a prince amongst a bunch of toads.

15 Q. When he came back, when he came back in '68 --

16 A. When he came home on leave?

17 Q. Well, of course. When you saw him during this time, I
18 mean, did you guys just get right back to being together?

19 A. Every time he came home on leave, we went out. Every time
20 we went out, he would ask me to marry him. I would say, Not
21 right now. And he would ask every time, and then finally in
22 '68, July of '68, I think it was, I finally said okay, yes.

23 Q. All right. And then you guys got married on September
24 14th, right?

25 A. In September.

1 Q. September 14th?

2 A. September 14th.

3 Q. My wife is going to be real mad that I knew your
4 anniversary.

5 But it was right after the start of trial, it would
6 have been your 55th wedding anniversary?

7 A. Yes, yes.

8 Q. Who are these two kids?

9 A. That's us.

10 Q. So you -- how old were you and how old was he when you
11 guys got married?

12 A. I was 19, he was 20.

13 Q. Where did you guys get married?

14 A. In Amesbury.

15 Q. Who are these two kids?

16 A. Same two kids.

17 Q. We're going to see a lot of pictures, and for a person
18 like myself, it's something I notice, but Roland goes beard on
19 and beard off a lot of times?

20 A. Many, many times, yes.

21 Q. So this is one of the beard off times.

22 A. Yes.

23 Q. That's a side story. But, you know, we just heard from
24 the testimony, and I know it's awkward listening to me read on
25 the part of your husband, but we heard him talk about your

1 children.

2 A. Yes.

3 Q. Who is this?

4 A. This is Roland and myself and our oldest daughter, Laurie.

5 Q. Okay. When was Laurie born?

6 A. Laurie was born in April of '69.

7 Q. So you guys were just, what, starting your life out
8 together here.

9 A. Yes.

10 Q. What's this?

11 A. That's Laurie a little older. That was taken at Lake
12 Chocorua at the bottom of Mt. Chocorua. We used to like to
13 hike in that area.

14 Q. Any memories about hiking with Laurie on this trip that
15 kind of stand out to you?

16 A. Yes. Laurie was Type I diabetic. So frequently, you
17 know, I had to pack extra stuff and I miscalculated that day,
18 and we were almost to the top of Chocorua when we realized that
19 we'd better head back down because I didn't have enough stuff.
20 But she was fine.

21 Q. Right. And then who are we looking at here?

22 A. Okay. On the left is our daughter Tina, and on the right
23 is our daughter Laurie, on, of course, Roland in the middle.

24 Q. Beard on?

25 A. Beard on.

1 Q. Yes. So, you know, the last part of this testimony, I
2 know it went on for a very long time, but the last part of this
3 we were talking about Laurie being gone and Tina being absent.
4 Can you just tell us kind of what happened with your daughters?

5 A. Well, Laurie moved here, moved to North Carolina with us
6 when we left, and she got a job there, and Tina, well, a year
7 and a half before, she had run away from home, and she -- from
8 the time she was 14 she was a difficult child. She just didn't
9 want to abide by the rules of the house. She had a boyfriend
10 that influenced her very much and she just left.

11 When we told her we were moving to North Carolina, she
12 was kind of back and forth on whether she was going to go or
13 not. And then the night before we left, she showed up with
14 several bags of her stuff and we were fine, we were happy, you
15 know, but early the next morning she said, Can't go, and she
16 had her boyfriend, that current boyfriend come and pick her up.

17 So we made the trip down with Laurie by car and over
18 the years we kept contact with Tina, but -- and she would come
19 to visit occasionally. She eventually married that young man,
20 and then there was conflict in the marriage. I didn't know it
21 at the time, but she had already started abusing prescription
22 medications. So in 1996, I believe, she came to live with us,
23 and she got a job as a CNA, and I still suspected, but it
24 wasn't -- evidently, she kept it hidden quite well.

25 Q. So she was having troubles?

1 A. Yeah, yeah, still with the prescription medications. But
2 she went on to marry a young man from North Carolina, the
3 father of our grandchildren, Jeffrey Lambert, and during that
4 time she seemed like she was getting worse. She wasn't happy.

5 Q. Right.

6 A. She had the two kids, she wasn't happy, and then he was
7 telling us that she was really abusing.

8 Q. Okay.

9 A. Specifically Adderall and Ambien. And it caused a big
10 rift in their marriage, and so he started proceedings for
11 divorce. He didn't want to, but he couldn't see any other way.
12 So she wouldn't attend the mediation --

13 Q. Honestly, I don't think we need to get into the
14 proceedings so much.

15 A. Okay, very good.

16 But, anyway, needless to say, at that point things
17 didn't go well and she -- she left and was living with someone
18 else.

19 Q. Okay.

20 A. And we found out when she had the kids on her time that
21 she wasn't always staying at the home.

22 Q. Did you and Roland -- did you lose touch with her?

23 A. Yes, eventually we did. Yeah.

24 Q. Was that hard for him?

25 A. It was extremely hard for him.

1 Q. Was it hard for you?

2 A. It was hard for me, yes.

3 Q. Did you have each other to support each other?

4 A. Most definitely, most definitely. We were in total
5 support of what we were doing, you know, making sure that the
6 grandchildren were safe.

7 Q. Right.

8 A. Period.

9 Q. Right. With -- I don't mean just to bring up bad things,
10 but Laurie, too, Laurie passed.

11 A. Yes.

12 Q. Do you just want to tell us about that event.

13 A. In 2015, Laurie got very kick, and she was very sick and
14 we picked her up from work and brought her home, but that night
15 her husband called and said she's bad. So we said, Call an
16 ambulance. And by the time they got her to the hospital --
17 well, she was unconscious at the house. I can't remember the
18 terminology that they used. She was breathing this certain
19 way. It was enough to give her oxygen but she was unconscious.

20 So they put her in a coma, and they tried and tried to
21 figure out what was wrong, and after about six days, we had her
22 transferred to Charlotte from the local hospital, and the
23 specialist there said she needs open heart surgery. So when
24 they brought her in for the open heart surgery, it was found
25 that the valve at the back of the heart had pretty much just

1 kind of blown apart, and she passed away on the table.

2 Q. I'm so sorry.

3 A. Thank you.

4 Q. Again, in times of unspeakable tragedy, was it just you
5 and Roland that are there for each other?

6 A. Yeah, yeah, pretty much.

7 Q. Let's talk about something happier.

8 A. Okay.

9 Q. What's he doing?

10 A. Posing next to his baby. He built that car from a kit.

11 Q. All right. Like he got a kit like in the mail?

12 A. A kit -- well, he actually purchased it from another man
13 who started on, got frustrate of decided it wasn't for him. So
14 he bought it in pieces, and he put it all together and got it
15 running.

16 Q. It was the kind of thing he liked doing?

17 A. Oh, yeah, yeah. He liked tinkering.

18 Q. So we've heard him talking about -- well, him in his
19 deposition talking about lawnmowers and engines and all of this
20 stuff. He liked to tinker, right?

21 A. Yes.

22 Q. So is this a Briggs & Stratton engine he's working on?

23 A. We went into a store one day and that just happened to
24 there, and he said, hey, get a picture of this just to show he
25 worked on anything.

1 Q. You mentioned your grandchildren.

2 A. Yes.

3 Q. Again, we're kind of going beard on a little bit.

4 A. A little bit yes.

5 Q. Who is this?

6 A. This is our granddaughter Jessica.

7 Q. Okay. And who are these guys?

8 A. This is Jessica and her brother Logan with Roland.

9 Q. Okay. And they live close to you guys?

10 A. Yes, they do, in the same town.

11 Q. That's great.

12 A. Yeah.

13 Q. I have to mention the beard-off Roland.

14 A. Oh, yes.

15 Q. What's this?

16 A. This is our coffee group. We, up until recently, were
17 meeting daily to have coffee and talk about everything, you
18 know, that old people talk about.

19 Q. And you did this every day?

20 A. We did it every day, yes.

21 Q. Okay. I mean, was this like your social meeting for the
22 morning?

23 A. It was a social meeting for the morning. These were all
24 other people who came from other states.

25 Q. Oh, wow.

1 A. So, you know, the people closest to Roland and me at the
2 front, they came from Rhode Island. The next ones came from
3 New Jersey. Next ones Maryland. And the ones on the end came
4 from Maine.

5 Q. So you wouldn't meet with all these people from out of
6 state every day?

7 A. They lived there. They were all transplants.

8 Q. Transplants --

9 A. I'm sorry.

10 Q. You confused me there for a second.

11 A. They're all transplants.

12 Q. So these were all of the people from up north who had
13 moved down to North Carolina?

14 A. Yeah.

15 Q. Did people jockey for position to talk to Roland?

16 A. Always.

17 Q. Why?

18 A. I don't know. It seemed like everybody liked talking to
19 him, so they gravitated towards him.

20 Q. So you guys were married for more than 50 years?

21 A. Mm-hmm.

22 Q. Did you enjoy doing things like this with Roland?

23 A. Very much, yeah.

24 Q. This is an awkward question, because we all have
25 relationships and experiences, but what did you like doing with

1 Roland?

2 A. With Roland it was easy. We were -- we often discussed
3 it, we were soulmates. We just like being in the presence of
4 each other, whether we were going for a walk, a drive, which we
5 did frequently on the Blue Ridge Parkway, that was one of our
6 favorite things to do, just spending time up there,
7 familiarizing ourselves with some of the floral, and we did
8 hike a couple of shorter trails. I wasn't real good at those
9 trails. Just spending time together. It was easy.

10 Q. Did you guys like to go on vacation?

11 A. Always the same places.

12 Q. Where would you go?

13 A. Amish Country in Pennsylvania. That was his absolute
14 favorite.

15 Q. All right. So now, beard-on Roland here, what is he
16 doing?

17 A. Oh, he's eating ice cream at his favorite farm to visit
18 there.

19 Q. What about this one?

20 A. That's the same farm.

21 Q. Okay. And you guys went there every year?

22 A. Every year.

23 Q. All right.

24 A. I think 2019 was the last time we went.

25 Q. All right. And that, as a person with a beard, that is a

1 beard that a person with a beard envies. But that's at the
2 same place, right?

3 A. Yes.

4 Q. So, you know I have to ask you about the events of why
5 we're here. The next series of photographs I'm going to show
6 you have to do with that.

7 A. Okay.

8 Q. And we all heard Dr. Holstein here talk about his review
9 of medical records, but you were there, you were there. So why
10 don't you tell us about what happened during 2020 that kind of
11 started this whole situation.

12 A. Okay. In 2020, about three days before Christmas, we got
13 the call from the doctor that the biopsy -- the tests that they
14 had done to that point showed that it could possibly be
15 cancerous, and she wanted to do the biopsy. And we were
16 driving on the interstate from one of our drives, I believe we
17 had probably been up to the parkway that day, and we were
18 driving back, and Roland had to pull over because what she was
19 saying was quite unsettling, and she did ask him, she said, Are
20 you driving, and he said, Yes. She said, Well, you might want
21 to pull over. So we did, and she delivered the news that it
22 was most likely cancer.

23 And he was quite devastated by it, as one would
24 expect, and so we took what we had and she said she'd be in
25 touch with the arrangements for the biopsy. So we went home

1 and we cried, and held each other and cried.

2 Q. Did you all know much about mesothelioma at that point or
3 what --

4 A. No, I mean, we had heard about it, you know, but didn't --
5 we weren't real familiar with what it was, what it entailed,
6 what the prognosis was, none of that.

7 Q. You all were scared, though?

8 A. We were scared, yeah.

9 Q. Okay. After the start of the New Year, 2021 being the New
10 Year, what -- what was the plan? What were you guys going to
11 do?

12 A. Roland was a very, very optimistic person, and he -- if
13 there was any surgery possible, he was going to follow through.
14 I would have preferred that he didn't do the surgery, and I
15 said that to him, but he says, you know, he says, I have to
16 try. He says, You know I don't give in that easy. So I said,
17 Okay. Okay, I support whatever your decision is. And so once
18 we got the biopsy and the results of the biopsy and then trying
19 to set up a meeting with Dr. Harpole for the second opinion,
20 which the doctor at the VA had said -- Dr. Willis said to him
21 it's your right to get a second opinion. So we did, and
22 Dr. Harpole felt like he could go in there and remove it.
23 So -- but the problem was trying that -- because of COVID
24 trying to get in there in a timely fashion. So by the time we
25 got in there, it was May. That's when they did the surgery, on

1 May 19th.

2 Q. What were your hopes going into the surgery?

3 A. I think my hopes and expectations were lower than what his
4 were. I think he thought this was, based on what he was being
5 told, he was very hopeful it was going to give him another two
6 or three years.

7 I feared that the surgery would make him weaker, and
8 it did. He did not have the quality of life once he had that
9 surgery.

10 Q. He described in his testimony the removal of four and a
11 half pounds of tumor?

12 A. That is what Dr. Harpole told us, that he was surprised
13 when he got in that there was that much, and when he weighed
14 it, it was about four-and-a-half pounds.

15 Q. What was -- what was Roland like after the surgery?

16 A. He was -- he was in pain and a very deflated individual,
17 trying still to stay positive. But it was hard, it was hard to
18 watch. He was -- he was in so much pain that when he would lay
19 down in the afternoon he would tell me -- he says, Nothing
20 against you, he says, but I pray every day that God will just
21 take me. He said, I don't know how much more I can take. And
22 I said I understood. I knew he didn't want to leave me, but I
23 knew it was too much.

24 Q. I have a picture that you've given to me, you've seen it,
25 and I'm going to show it to you, okay, you know which one it

1 is.

2 This picture of Roland, for the testimony that we were
3 just reading, how close in time from that testimony and that
4 picture was taken.

5 A. This was probably within, I'd say, two or three months
6 because I had -- it got worse. They -- he just became more and
7 more pale and drawn and I was -- you could just see on his face
8 how much it was taking out of him.

9 Q. Did he continue fighting? I mean, did he keep trying?

10 A. He tried, you know, he tried keeping a positive attitude,
11 and, quite honestly, until maybe two weeks before I think he
12 still had some kind of hope that he could push himself and get
13 through this.

14 Q. We heard about the chemotherapy. What did chemotherapy do
15 to him?

16 A. It weakened him to the point that it -- I mean, we had to
17 finally get a walker so that he could stand up, get out of the
18 chair, and I would help him get undressed at night. He
19 couldn't even bend over to get his pants down or take his shoes
20 off. Yeah, it was difficult.

21 Q. For somebody -- for somebody who had been kind of in the
22 family role that he had been in for as many years as he had
23 been in, was this hard for him to have to be taken care of?

24 A. Oh, yeah. He kept apologizing. Everything he had to
25 asked me do, he'd apologize.

1 Q. I want to -- we're almost through, okay. I want to talk
2 to you about the beginning of 2022. Was there a decision made
3 to stop doing chemotherapy?

4 A. He had completed his six treatments in December, and Dr.
5 Sholar felt like there wasn't any point in doing any more, and
6 we did keep our appointment on January 14th with Dr. Harpole in
7 Duke, and he just -- I could hear what he was saying, but I
8 don't think Roland wanted to hear what he was saying, that this
9 was the way it was going to be, there was nothing more he could
10 do.

11 So we went home from Duke, did a lot more crying
12 together. He kept getting worse, the breathing was horrible.
13 Every time he moved, it would drop down into the 60s. He was
14 getting to the point it wasn't even getting into the 90s
15 anymore. He was lucky if it was in the 80s.

16 So on February 14th of '22, we had -- he forced
17 himself to make it out to the car, and we went and got our
18 coffee and sat at the park like we did every morning during
19 COVID, and we drank our coffee, and we went back home, and he
20 could hardly get back into the house.

21 When we got in, just coincidentally at that moment, he
22 sat down in the chair near his desk and the phone rang, it was
23 the nurse from the VA checking, just normal checkup, and she
24 could hear the panic in my voice, and I told her, I said, We
25 just got in from having a coffee, I said he went up five

1 stairs, I said, he can't breathe. His oxygen level is like at
2 63. And she says, Get him to the emergency room now. And that
3 was the last time he was in our home.

4 Q. This picture here, is this from the hospital?

5 A. That is from the continuous care center down in Charlotte.
6 This is like a few days before we transferred him to the VA in
7 Salisbury. This was when he, I think, really started realizing
8 that he wasn't ever going home again, and that's when he said
9 to me, he said, I'm never going to go home again. And I said,
10 No, I don't think so. And he was trying to come to terms with
11 that fact.

12 Q. You know, in this photo, you're smiling.

13 A. Got to try.

14 Q. Got to try.

15 Do you remember when they told you?

16 A. Mmh?

17 Q. Do you remember when they told you?

18 A. That he had passed?

19 Q. Yeah.

20 A. Yes, I remember.

21 Q. We don't need to talk about that.

22 A. Okay.

23 Q. Do you keep anything with you?

24 A. That's his last pair of glasses. I use them as my reading
25 glasses now. We both had cataract surgery and just

1 coincidentally needed the same number.

2 Q. Roland's been gone now for a little over a year. Since
3 he's been gone, can you just give us an idea of what your life
4 is like now without him here.

5 A. It's like a piece of me is gone. Excuse me. Yeah.

6 It's -- the piece of me is gone. I miss him very, very much.

7 Q. I'm sorry for having to ask you these questions.

8 A. I know that.

9 MR. BRALY: I'll pass the witness.

10 MR. FITZPATRICK: Are you okay, Mrs. Cook?

11 THE COURT: I was just going to ask, would you like a
12 break before we go on?

13 THE WITNESS: No.

14 THE COURT: Are you sure?

15 THE WITNESS: I'm sure.

16 THE COURT: Go ahead, Mr. Fitzpatrick.

17 MR. FITZPATRICK: I'll keep it short.

18 CROSS-EXAMINATION

19 BY MR. FITZPATRICK:

20 Q. Are you still nervous?

21 A. Yes.

22 Q. Mrs. Cook, on behalf of Foster Wheeler, we're sorry for
23 the passing of your husband. He was a good man, you had a good
24 marriage, and God bless him for serving our country.

25 And those are all the questions I have.

1 THE COURT: Redirect?

2 MR. BRALY: No, Your Honor.

3 THE COURT: You're excused, Mrs. Cook.

4 THE WITNESS: Thank you.

5 MR. BRALY: Your Honor, the plaintiffs rest.

6 THE COURT: My understanding is that this all went a
7 little bit faster today than we had anticipated. And I think
8 by agreement the defendants have their first witness lined up
9 for tomorrow morning.

10 Is that right?

11 MR. FITZPATRICK: That is correct, Your Honor.

12 THE COURT: Okay. So we are going to adjourn for
13 today. Your lunch is coming up at 1:00. You're more than
14 welcome to sit up there and have lunch or take it to go or just
15 leave, whatever you want to do.

16 You've heard the full presentation of the plaintiffs'
17 case. So this can sometimes be an easy time to start forming
18 opinions about what you think the outcome ought to be, but I'm
19 going to ask you to continue to keep an open mind because you
20 haven't heard the defendant's presentation on the other side of
21 it.

22 So keep an open mind, no conversations with anyone
23 about the case, no extracurricular research, and -- is tomorrow
24 Friday?

25 MR. BRALY: Yes.

1 THE COURT: I think we'll go from 9:00 to 1:00
2 tomorrow. So we'll see everybody at 9:00, okay.

3 Thanks very much. Recess for the day.

4 THE CLERK: All rise for the jury.

5 (Jury left the courtroom.)

6 THE COURT: What do you anticipating for tomorrow?

7 MR. FITZPATRICK: Your Honor, we will have Admiral
8 Padgett. I think from 9:00, he will go to probably 11:00 or
9 11:30 with cross, and then our last two witnesses are Tuesday,
10 and we're done.

11 THE COURT: So we probably won't make it until 1:00
12 tomorrow.

13 MR. FITZPATRICK: No, I'm sorry.

14 THE COURT: It's okay.

15 I'm going to circulate a draft of this charge today.
16 It's still rough and there's some issues, but it will at least
17 give you a starting point, and we can plan on having a charge
18 conference tomorrow afternoon after maybe we break for lunch.

19 MR. FITZPATRICK: And, Your Honor, may I put a couple
20 of motions on the record --

21 THE COURT: Yes.

22 MR. FITZPATRICK: -- with your permission.

23 Obviously, at this time, Foster Wheeler would move for
24 the striking of the loss of consortium damages as not being
25 recoverable in a wrongful death action under maritime law.

1 *Miles v. Apex Marine*, 498 U.S. 19 (1990). Congress limited
2 recovery in wrongful death cases under the Jones Act, Death On
3 the High Seas as to pecuniary damages. Under Massachusetts law
4 we understand they can be recovered but a choice of conflict
5 exists and Massachusetts may not be applied where it's
6 materially different.

7 With respect to punitives, we also move to strike,
8 same reason. Maritime does not permit punitive recovery,
9 damages in a wrongful death or survival action. In furtherance
10 of the rule, numerous federal courts bar the imposition of
11 punitive damages under maritime law. With Dutra, we filed
12 those motions so I don't want to waste your time. You know --
13 I mean, we filed the brief or cited the cases.

14 Moreover, Judge, there's no evidence of egregious or
15 outrageous conduct. The only evidence this Court has heard is
16 the Navy did the full studies and then one became a CEO of
17 Foster Wheeler. Number two, the Navy controlled everything.
18 And number three, we went to a meeting in '68 where the whole
19 world was there basically, everybody -- so there's nothing that
20 was egregious that Foster Wheeler, that didn't make the
21 product, knew about asbestos.

22 So on that alone there's not sufficient evidence. In
23 fact, Captain Moore said there is nothing that Foster Wheeler
24 knew that the Navy didn't know. There was nothing Foster
25 Wheeler could tell the Navy.

1 So on that -- both bases, we would move to strike both
2 of us.

3 And, obviously, we don't forfeit our rights until we
4 decide, I guess, how your damages are going to be. We don't
5 need to waive those rights. So, Judge, I appreciate your
6 courtesy to let me put that on the record.

7 THE COURT: Are you submitting in writing, or are you
8 going to rely on the oral presentation?

9 MR. FITZPATRICK: Can I ask my expert?

10 (Discussion off the record.)

11 MR. FITZPATRICK: If the Court would allow us, we
12 would appreciate to submit that by the end of today.

13 THE COURT: That's fine.

14 I have -- I'm sure you've all done your research on my
15 practices. I have never thrown out a claim before a jury
16 verdict.

17 MR. FITZPATRICK: I understand, Judge. That's why
18 they pay you the big bucks.

19 THE COURT: I have thrown it out after a jury verdict
20 and was reversed and -- so I'll take a look at it.

21 You know, with regards to the gross negligence or the
22 reckless conduct, I hear you on that, but at this point I think
23 that's a factual issue for the jury. And I'll take a look at
24 the other two just because I'm not as familiar with the
25 intersection between maritime and Massachusetts law.

1 MR. FITZPATRICK: All right, Judge. Thank you for
2 your time.

3 THE COURT: Would you like to be heard on that?

4 MR. BRALY: Briefly. As it relates to the maritime
5 issue, you'll find cases cited by Foster Wheeler almost
6 unanimous require the predicate filing of a recovery action
7 under the Jones Act or the Death on the High Seas Act and we
8 pled neither.

9 That's not -- maritime general common law is a thing
10 that applies to these cases, and there's never been any case
11 holding that under maritime common law that these damages are
12 not recoverable, which is why this request was denied in the
13 Pritt case, which is pending in this courthouse, and why this
14 was denied earlier.

15 When you review the cases, you will notice that they
16 are all in association with a Jones Act claim, which is a quasi
17 workers' compensation action that we couldn't bring even if we
18 wanted to, and Death On the High Seas Act, which, again, is
19 inapplicable to the type of injury Mr. Cook had.

20 THE COURT: All right. It is my proclivity to send it
21 to the jury and to parse out the damages. So if I'm wrong on
22 it, it can just be excised without us all having to do this
23 over again. I'm quite sure that none of us want to do it over
24 again, particularly Mrs. Cook. So I would rather have some
25 belt and suspenders and leave the Court of Appeals in a

1 position where they can figure out if what I did was wrong in a
2 way that doesn't require any of us to be here again.

3 MR. FITZPATRICK: Judge, we have a pending motion on
4 that, and I think as a matter of law, that's why we had made
5 those. But you'll have it --

6 THE COURT: You have a pending motion on --

7 (Discussion off the record.)

8 MR. FITZPATRICK: Our -- well, we have a pending
9 motion in Rule 58 -- 50(a).

10 THE COURT: You have a pending motion on market share
11 theory of liability.

12 MR. BRALY: Market share was DCo's motion.

13 THE COURT: Oh, it was. Okay. So --
14 What other motions are pending.

15 MR. FITZPATRICK: I'll ask my expert.

16 MS. MERCER-LAWSON: He meant to say that Foster
17 Wheeler has pending on record as of this morning a motion for
18 judgment as a matter of law pursuant to Rule 50. We just
19 wanted that to be on the record.

20 THE COURT: Okay, I just haven't seen it yet, since I
21 was here with you people.

22 MR. FITZPATRICK: That's my expert.

23 THE COURT: I know, I can make a joke about behind
24 every good man, but I'm going to hold off.

25 MR. FITZPATRICK: She's in front of me, Judge.

1 THE COURT: All right. So I'll get you a draft today
2 with the understanding hold your outrage because it's still
3 rough and see you -- we -- I don't need to see you on the jury
4 charge in the morning because we'll have the afternoon. But if
5 there's anything else, I'll be on the bench as quickly as I
6 can, which will probably be 8:30, maybe a little later.

7 MR. FITZPATRICK: Thank you, Your Honor.

8 THE COURT: Thanks, everyone. The case is recessed.

9 (Adjourned, 12:44 p.m.)
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1 CERTIFICATE OF OFFICIAL REPORTERS

2
3 Kelly Mortellite, RPR, RMR, CRR, and Debra M.
4 Joyce, RMR, CRR, FCRR, in and for the United States District
5 Court for the District of Massachusetts, do hereby certify that
6 the foregoing transcript is a true and correct transcript of
7 the stenographically reported proceedings held in the
8 above-entitled matter to the best of our skill and ability.

9 Dated this 21st day of September, 2023.

10
11
12 /s/ Kelly Mortellite

13 _____
14 Kelly Mortellite, RPR, RMR, CRR
15 Official Court Reporter

16
17
18 /s/ Debra M. Joyce

19 _____
20 Debra M. Joyce, RMR, CRR, FCRR
21 Official Court Reporter
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